The Solicitors' Journal

Vol. 103 No. 17 [pp. 315–334] APRIL 24, 1959 [One shilling and ninepence

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SOLICITORS' JOURNAL

VOLUME 103

NUMBER 17

CURRENT TOPICS

Domicile Difficulties

IN view of the peculiarly legal character of the concept of domicile and its encroachment into many fields, it is perhaps not surprising that the sponsors of the second Domicile Bill to be introduced into Parliament within a year have found it necessary to drop that Bill for the time being. The introduction of the Bill followed the report of the WYNN PARRY Private International Law Committee, published in January, 1954, which criticised the law as it stands in view of the decisions in *Winans* v. *Attorney-General* [1904] A.C. 287 and *Ramsay* v. *Liverpool Royal Infirmary* [1930] A.C. 588. Enactment of the Bill would have permitted this country to adhere to the Hague Convention of 1951 on the regulation of conflicts between the national law and the law of domicile, so eliminating the circumgyrations of renvoi. Alteration in the wording of the first Bill followed apprehensions amongst some foreign businessmen resident here that they would be adversely affected in matters of income tax and estate duty if the original wording were passed into law. The alterations drew severe strictures in *The Times* and elsewhere from many lawyers, including Dr. G. C. CHESHIRE, and Dr. M. H. VAN HOOGSTRATEN and Dr. J. OFFERHAUS respectively the Secretary-General and President of the Seventh and Eighth Session of the Hague Conference on Private International Law, who pointed out that enactment of the second Bill would prevent Great Britain adhering to the Hague Convention. Progress on any third Domicile Bill would be expedited if the Revenue law difficulties could first be solved. Attention should be given to the possibility of the Inland Revenue granting a certificate, which would be conclusive in Revenue matters only, during any applicant's lifetime as to the location of his permanent home. For the moment the final act of emancipation of married women—permitting them to have domiciles different from their husbands'—is postponed. We hope that the delay will not be a long one and that the next Domicile Bill will exemplify the old adage of " third time lucky."

Thurso Report

THE report of the tribunal set up under the Tribunals of Inquiry (Evidence) Act, 1921, to inquire into the case of alleged assault by two police constables against the boy, JOHN WATERS, at Thurso on 7th December, 1957, was published last week. The setting up of the tribunal was the climax to a series of events which started when two policemen on duty visited a café where obscene language was addressed to them by Waters. They took the boy outside and warned

CONTENTS

him of his behaviour. Later, he ran after them and complained that they had torn his jacket. They moved him into a dark alley where he was struck. The tribunal was satisfied that the boy used shocking language, that Constable ROBERT GUNN struck him and that subsequently the other policeman concerned, Constable GEORGE HARPER, who was exonerated from any complicity in the striking of the blow, offered to pay money for the dropping of the complaint made by the boy's father. The incident, itself not of the first magnitude, was badly handled from the viewpoint of public relations. Under Scottish law no man may be convicted on the uncorroborated evidence of one witness; as no corroboration was available the PROCURATOR-FISCAL declined to sanction a prosecution of Constable Gunn. The case was properly and effectively taken up by Sir DAVID ROBERTSON, the member for Caithness and Sutherland. The LORD ADVOCATE'S concurrence with the Procurator-Fiscal's decision was announced but nothing like a full statement on the case could be obtained from the Lord Advocate or the SECRETARY OF STATE FOR SCOTLAND. The impression was thus created that vital information about the case was being withheld. Parliamentary and public pressure forced the holding of the inquiry. Now that this inquiry is completed consideration should be given to the provision of alternative procedure to the heavy and expensive method available under the 1921 Act for this type of probe.

Egyptian Compensation Claims

FOLLOWING the agreement dated 28th February, 1959, made between this country and the United Arab Republic about compensation to be paid to Her Majesty's Government by the Republic, statutory instruments have now been published to regulate the procedure to be followed by claimants. Under the Foreign Compensation (Egypt) (Determination and Registration of Claims) Order, 1959 (S.I. 1959 No. 625), the Foreign Compensation Commission is to determine certain claims to participate in the compensation and is to register some other claims on which it will report to the Foreign Secretary. The Foreign Compensation Commission (Egyptian Claims) Rules, 1959 (S.I. 1959 No. 640), prescribe the procedure to be followed before the Commission and are intended to enable claims to be disposed of more speedily than they could be under the Commission's usual rules of procedure. Persons having claims under the Order in respect of property sold by the Government of the Republic between 30th October, 1956, and 2nd August, 1958, and who have not registered their properties with the British Property in Egypt Section of the Foreign Office should apply to the Secretary of the Commission, 1 Princes Gate, London, S.W.7. Claimants in respect of property sequestrated by the Government of the Republic or in respect of other losses in Egypt incurred between 30th October, 1956, and 28th February, 1959, who have not registered their properties with the British Property in Egypt Section of the Foreign Office should get in touch with that Section. This subject of claims for losses in Egypt is considered at greater length in an article at p. 319, *post*.

Litigant in Person

THE litigant in person appears to be becoming a more familiar figure in courts of law these days than previously. Whether this trend will continue when legal aid and advice are more widely available than at present remains to be seen. The example of Colonel WINTLE in winning the final battle at House of Lords level after earlier reverses undoubtedly encourages any waverers amongst the ranks of would-be litigants in person. The latest such litigant to succeed is Mr. FREDERICK KAHN who persuaded the Queen's Bench Divisional Court to hold that a costermonger's barrow was not a "place where any retail trade or business is carried on" within ss. 2 and 12 of the Shops Act, 1950 (*Kahn* v. *Newberry*, *The Times*, 15th April, 1959). The court (LORD PARKER, C.J., DONOVAN and SALMON, JJ.) allowed Mr. Kahn's appeal against a decision of London Sessions Appeals Committee dismissing his appeal against his conviction at Westminster Magistrates' Court of trading in contravention of s. 12 of the 1950 Act. The appellant successfully relied on *Stone* v. *Boreham* [1959] 1 Q.B. 1, where it was held that the site in a street occupied by a mobile van was not a place where retail trade or business was carried on; the van itself could not be such a place in view of the decision that a movable tricycle from which ice-cream was sold was outside the relevant provisions of the Shops (Sunday Trading Restriction) Act, 1936 (*Eldorado Ice Cream Co., Ltd.* v. *Keating* [1938] 1 K.B. 715). Recently the Lands Tribunal had occasion to remark that it was obvious from his evidence that the (in this case unsuccessful) appellant ratepayer in person did not clearly understand rating law nor how the gross value of his hereditament should be determined under the Valuation for Rating Act, 1953 (*Homan* v. *Marshall* (*V.O.*) (1959), 52 R. & I.T. 260). We have every sympathy with any lack of comprehension from which that appellant may have suffered; that, with respect, is hardly noteworthy. The remarkable thing is how often a litigant in person not only shows acute perception of complex legal points involved but is also able to persuade an appellate court of the correctness of his view of the law

Contributing to Insolvency

ANY person who has been adjudged bankrupt is guilty of a misdemeanour if, having been engaged in any trade or business, and having outstanding at the date of the receiving order any debts contracted in the course and for the purposes of such trade or business, he has within two years prior to the presentation of the bankruptcy petition materially contributed to or increased the extent of his insolvency by gambling unconnected with his trade or business (s. 157 (1) (*a*) of the Bankruptcy Act, 1914). The Hendon magistrates have recently convicted a man of this offence. It appears that he went into business on his own account as a fur cutter. His business did not prosper and he took to gambling on dogs in the hope of saving it. These activities were no more successful than the business, and the magistrates took the view that they constituted a material contribution to his bankruptcy. It will be remembered that in *R.* v. *Vaccari* [1958] 1 W.L.R. 297 the Court of Criminal Appeal quashed a conviction for a similar offence. In that case a café proprietor who owed income tax amounting to £7,000 was adjudicated bankrupt and, when prosecuted under s. 157 (1) of the 1914 Act, he did not dispute that he had lost some £6,000 by gambling in the two years prior to the date of the receiving order. However, the court upheld his submission that an income tax liability was not a debt contracted "in the course and for the purposes of . . . trade or business." CASSELS, J., found that it was not a trade debt but a statutory liability and, in view of this, it could not possibly be said to come within the four corners of the words of s. 157 (1) of the statute.

OBSCENE PUBLICATIONS BILL

THIS might perhaps be a convenient moment (as the judges say at five minutes to one) to consider the position now reached by the Obscene Publications Bill. Standing Committee *C* of the House of Commons, which is responsible for the committee stage of most Private Members' Bills, has now made its amendments and the Bill stands reprinted, ready for the report stage on 24th April.

The success of some of the amendments could scarcely have been expected by anyone. It was plain at least that the Solicitor-General, Sir Harry Hylton-Foster, was frequently taken aback despite his customary urbanity and the atmosphere of give-and-take—even, occasionally, of badinage—which enlivened the Committee's proceedings.

Procedure

The procedure itself was unusual. The Government still did not like the Bill (presented now by Mr. Roy Jenkins, M.P., in its third edition since March, 1955), though in its latest form it followed in precise detail all the recommendations of the 1958 Select Committee. In particular, the Home Office wanted a definition of " obscene matter " which would include everything visual or audible (and produced one of their own which, no doubt by inadvertence, would have penalised even a story told in a club) ; and they were strongly opposed to the clause in Mr. Jenkins' Bill which gave a right of audience in a criminal trial to the author and publisher of an offending book whether or not they were parties in the proceedings.

When, therefore, the Government had been induced (obliged is probably the word, in view of Sir Alan Herbert's threat to lose them the East Harrow by-election) to give time for the Bill, they introduced " draft clauses " of their own. In effect, these amounted to a Government version of a Private Member's Bill ; and the Herbert Committee and its Parliamentary men had to decide whether to fight an aggressive and " liberalising " action on a battle-field thus chosen by the Government, or to persist with its own Bill and conduct a defensive campaign against the kind of attack of which it was now forewarned. Wisely, as can now be seen, it chose the former course, and was able to whittle down the Government clauses to something not very different from the original Bill.

Test of obscenity

The " test of obscenity," which is now the burden of cl. 1, is as follows :—

> For the purposes of this Act, matter shall be deemed to be obscene if its effect or (where the matter comprises two or more distinct items) *the effect of any one of its items* (1) is, if *taken as a whole*,(2) such as to tend to deprave and corrupt persons who are likely, *having regard to all relevant circumstances*, (3) to *read, see, or hear it.*(4)

The phrases here italicised and numbered (1) to (4) represent sharp battles in committee. Number (1) solves the problem of the book or magazine of short stories, only one of which could be said to be obscene : the words " as a whole " (2), on which the sponsors of the Bill insisted, might otherwise have meant immunity for the skilfully sandwiched item of pornography. The " relevant circumstances " (3) which are to qualify the likelihood to " read, see or hear ", and which will presumably include the manner, place, and conditions of publication (including perhaps the price of a book), are specifically *not* to include—

> the circumstances of any publication of the matter by a person who is neither the person charged nor a person publishing the matter in consequence of publication by the person charged.

This is the wording of a proviso to the definition clause. Explaining it, the Solicitor-General said that he supposed a judge would direct a jury thus : " You are to look at all the surrounding circumstances and then to consider who are likely to see, read, or hear the matter in question. However, when you do that, you must consider only those cases that are the consequences of the publication with which you are concerned, and not some wholly collateral publication."

The Standing Committee, I believe, felt that this afforded an escape for (e.g.) the history don who might lend another don his Decline and Fall of the Roman Empire ; but the proviso is not the most pellucid passage in the Bill, and it is likely to provoke more discussion in the remaining stages.

There was much uneasiness about " read, see, or hear it " (4), which phrase is entirely Government-inspired. At first, it was seen by some members of the Standing Committee as a sinister attempt to impose new and unheard-of censorship conditions upon radio, television, the cinema, the theatre, and floor-shows in clubs. The Solicitor-General explained that it merely reproduced the existing common law, and was necessary because the Bill itself proposes the abolition of all common law prosecutions for obscenity.

> The Government have no desire (he said) to strengthen the law in any way as against films or stage plays. Those words are there because of the range of the matter, as we see it, with which we have to deal in a Bill of this kind. I invite the Committee to take the view, which I believe to be right, that those words do not involve any extension whatever of the existing law of obscenity operating in respect of oral and visual communication of obscene matter.

The Committee were not wholly reassured. They saw clearly enough that a long-disused common-law principle may come dangerously to life when it is given statutory expression ; and there will be much discussion of this, too, when the House of Commons considers the amended Bill. For the present, its scope is slightly abridged by Mr. Roy Jenkins' amendment defining the " matter " which may be adjudged obscene as meaning " any book, magazine, card, writing, print, painting, lithograph, engraving, film, carving, sculpture, cast, sound recording, or other article." The words are adopted from the Customs (Consolidation) Act, 1876 ; and they would confine the new Act to what is material and tangible (the latest story in the West End club would be safe).

The penalties for publishing obscene matter, " whether for gain or not," are now to be £100 or six months on summary conviction (the Government had proposed £500 or six months), and " a fine " or three years—or both—on conviction on indictment. The unspecified fine was attacked in committee, Mr. Roy Jenkins suggesting that a maximum ought to be laid down and that £2,000 ought to be enough (the Select Committee had proposed £3,000). The Solicitor-General's response was that if you fixed a figure that was appropriate to the worst cases, you tempted the judges to resort to something like it in all cases. (He abandoned an attempt to maintain that

maximum fines are never prescribed for conviction on indictment in face of a formidable list, read out by Mr. Jenkins, of cases in which Parliament has done it.) Oddly, it may be thought, an amendment to reduce the three years' maximum to two was successfully resisted by the Solicitor-General on the ground that his former argument about tempting the judges into severity did not in this case have any force. (" I cannot explain psychologically why it is so," said Sir Harry, " I just believe it.") The penalties must be regarded as far from settled.

Time-limit for prosecution

A limitation of time for prosecution on indictment (always a rarity) was agreed upon : it is to be two years. A defence of innocent dissemination was provided for booksellers and others who have not had time to read the book or reason to suspect its morals. And thus the Committee came to the crucial question of " public good " and " literary merit."

The Government clause said that a person should not be convicted—

> if he proves that [his] publication of the matter in question is justified as being for the public good on the ground that it is *in the interests of* science, literature, art, or learning, or of other objects of general concern.

By comparison with the Government's original attitude, this represented substantial concessions ; but the Committee thought it was capable of considerable improvement. They first took out the word " his " (here shown in square brackets) because it would have required, for example, that a street-corner news-stallholder would have to prove that " his " publication of some borderline book of literary genius or medical value was for the public good, etc. This would be an onus which such a man could hardly be expected to discharge, and yet his failure to do so might involve a reputable author and publisher in reflected obloquy. I have, moreover, italicised the phrase " in the interests of " because it took the place of the Government's words about " furthers the interests of " (science, literature, etc.) ; Mr. Roy Jenkins successfully argued that it might well be impossible to prove that a book had " furthered " such interests, i.e., advanced them to a new point of development, whereas it might be feasible to prove that the same book was " in " those interests.

Admissibility of expert evidence

The Committee then turned to the admissibility of " expert " evidence as to " literary, artistic, scientific, or other merits." The Solicitor-General assured them that the clause *as it stood* conferred a right upon the defendant " to seek to make good his defence before the court by the calling of admissible evidence." He said that in his belief it was " quite unnecessary to add anything to that provision to establish the right to call all properly admissible evidence in this context." But the committee distrusted the phrase " admissible evidence." They wanted the necessary evidence declared admissible, and cited numerous statutes (e.g., the Criminal Evidence Act, 1898) which had done so in the past. In the end, they secured the following addition to the clause :—

> and expert evidence as to the literary, artistic, scientific, or other merits of the said matter shall be admissible in any proceedings under this Act either to establish or to negative a defence under this subsection.

The much-discussed question whether, in a criminal trial as distinct from proceedings *in rem*, the author and publisher should have a right of audience although not made parties to the proceedings, was really disposed of in an extremely lucid speech from Mr. Niall MacDermott, who in all other respects had opposed the Government clauses. He said, as others have done in this controversy, that the proposal would introduce a novel principle into English law, though this alone has not been enough to satisfy those who have been declaring themselves unafraid of legal innovation. But he went on to ask what the status of such an intervener would be. Could previous convictions be put to him in cross-examination ? Could they even be led ? " Either the defendant intends to raise the special defence of justification," he continued, " or he does not. If he does not, then he is obviously not going to consent to the author or publisher intervening. If he does, then it seems to me wholly unnecessary for the author or publisher to intervene, because that defence will be raised : the expert evidence will be tendered by the defendant." The committee—and even Mr. Roy Jenkins—seemed persuaded ; and, for the time being at least, the proposal was dropped.

Proceedings *in rem*

Coming then to proceedings *in rem*, the part hitherto played by the Obscene Publications Act, 1857, members of the committee objected first to a Government proposal that the search warrant should be valid for execution " at any time or times " within fourteen days from its date of issue. This, it was thought, would enable the police to return again and again to search premises in the hope of finding what they suspected—which was said to be exactly what the police wanted. The words " at any time or times " were dropped, and the warrant is now valid for one search only—including, specifically, the seizure of any documents relating to the business carried on at the " premises, stall, or vehicle " searched.

And here, in proceedings against the book or other article seized, the " owner, author, or maker " is given the right to intervene and show cause why a destruction order should not be made. A new and salutary check upon frivolous or vexatious complaints under this provision is that the complainant may be ordered to pay all the costs of the case if it fails. This provision may well have satisfied those who wanted the Director of Public Prosecutions made responsible for all the " destruction order " cases, as well as for all the criminal prosecutions.

The Solicitor-General, to say nothing of those members of the Standing Committee who did not like the Bill at any stage, left a final impression of *reculer pour mieux sauter*. For the reformers, the next battle will be the decisive one.

C. H. Rolph.

Personal Notes

Mr. Harry E. Jackson, solicitor, of Lutterworth, was married on 8th April to Miss Dorothy V. A. Smith.

Mr. Ian David Nixon Miller, solicitor, of Leeds, was married on 4th April to Miss Grace Jowitt.

CLAIMS FOR LOSSES IN EGYPT

On 9th April, 1959, the Foreign Compensation (Egypt) (Determination and Registration of Claims) Order, 1959 (S.I. 1959 No. 625) came into operation. It differs in many respects from the various Orders in Council which have provided for the settlement of claims of British nationals affected by the nationalisation and other restrictive measures of Eastern European countries, such as the Foreign Compensation (Czechoslovakia) Order in Council, 1950 (S.I. 1950 No. 1191) and the later Orders; the Foreign Compensation (Bulgaria) Order, 1958 (S.I. 1958 No. 261); the Foreign Compensation (Hungary) Order, 1958 (S.I. 1958 No. 594); and as to Poland see S.I. 1956 No. 618, 1957 No. 101, 1956 No. 617. All these Orders, as indeed was the Egypt Order, were issued under the Foreign Compensation Act, 1950.

There appear to be three main reasons for the differences between the earlier Orders and this latest Order relating to Egypt. (i) All previous Orders dealt with British interests affected by measures of nationalisation in countries which had introduced a completely new economic structure, whereas Egypt still largely retains its established economic order; (ii) Egypt affords facilities for obtaining information about British claims and will make available all documentation held by the Egyptian authorities concerning the claims (such facilities were not granted by the various Eastern European States which nationalised British property); and (iii) Egypt returns, in principle, all British property to its owners.

It is for these three reasons that the Foreign Compensation (Egypt) Order, 1959, differs intrinsically from the previous Orders in Council and so deserves special study.

Provisions made by Foreign Compensation (Egypt) Order

The Foreign Compensation (Egypt) Order in Council, 1959 (hereinafter called "the present Order"), provides merely for the determination by the Foreign Compensation Commission of certain claims to participate in compensation received by the United Kingdom Government from the Government of the United Arab Republic under the agreement of 28th February, 1959, concerning financial and commercial relations and British property in Egypt (hereinafter called "the agreement"). It does *not* provide for the distribution of the compensation received, although Pt. II (arts. 2 and 3 thereof) provides machinery for the setting up of the "Egyptian Compensation Fund" out of sums "received under the agreement." All of the previous Orders in Council enabled the Foreign Compensation Commission to make payments to claimants who had established a claim (see, e.g., arts. 3–5 of the Czechoslovakia Order and arts. 3–5 of the Hungary Order). The present Order merely authorises the Commission to register claims and to report thereon to the Foreign Secretary "in such manner as he shall direct" (arts. 6 and 10).

It is difficult to understand why in this instance the commission is not authorised to make payments and interim payments as was done in the case of claims against Eastern European States. It is possible, of course, that the British Government might wish, should the total of the established claims greatly exceed the sums available under the agreement, to make some contribution to augment the amount of £27,500,000 payable by Egypt under the agreement. But this is not borne out by art. 2 of the present Order which makes it clear that the Egyptian Compensation Fund will consist only of funds "received under the agreement."

It might be, however, that the procedure laid down in the present Order (arts. 6 and 10), i.e., for the Commission to register established claims and "report thereon to Her Majesty's Principal Secretary of State for Foreign Affairs in such manner as he shall direct," is designed to leave open this question. Such procedure could lead to legal difficulties not experienced under the practice as it developed under the earlier Orders in Council.

Section 4 of the Foreign Compensation Act, 1950, provides that "the determination by the Commission of any application made to them under this Act shall not be called in question in any court of law." An attempt to challenge the validity of an award of the Commission was, indeed, made in the Divisional Court by way of certiorari proceedings in connection with a claim under the Czechoslovakia Order, but was unsuccessful. The question which now arises is whether in its determinations under arts. 6 and 10 of the present Order the Commission is covered by the protection afforded to its awards by s. 4 of the Foreign Compensation Act. Will the Foreign Office upon receiving a report on a claim be able to "direct" the Commission in any way? Section 4 of the Foreign Compensation Act did not purport to protect any administrative procedure but only the strictly judicial functions of the Commission itself. The possible consequences of imposing a duty on the Commission to "report" on claims and their determinations to the Foreign Secretary who is given power to "direct" the Commission, appear crucial. The Foreign Compensation Act does not appear to authorise the Foreign Office to give any directions to the Foreign Compensation Commission.

Determination of claims

Once the Compensation Fund has been established by the Commission the determination of claims and subsequent distribution of the fund should be solely the Commission's responsibility and the Commission, as a judicial body, should not only be, but appear to be, completely independent from the Foreign Office. The Foreign Compensation Commission has in the nine years of its existence acquired both here and abroad a very high and fully deserved reputation for the quality of its work, both judicial and administrative, and there appears no reason to justify any restrictions on its authority. It is, I think, important for the maintenance of its judicial authority that it should not appear to be merely a fact-finding body attached to and subject to the directions of the Foreign Office.

A further element of novelty in the present Order is the close connection between it and the agreement. The Order cannot be understood without a study of the underlying agreement to which it refers in arts. 2, 4 and 6.

The Order deals in Pt. I with matters of interpretation, in Pt. II with the establishment of the Compensation Fund into which £27,500,000 is to be paid, i.e., the amount which the Government of the United Arab Republic undertook to pay in full and final settlement of British claims, in Pt. III with claims in respect of property sold between 30th October, 1956, and 2nd August, 1958, under Egyptian Proclamation No. 5 of 1st November, 1956, and in Pt. IV with claims in respect of property lost, injured or damaged as a result of Egyptian measures. Notice of any claim which falls within Pt. III of the Order must be received by the Commission on or before 28th September, 1959.

Part V of the Order provides that an application shall not be entertained by the Commission unless made in accordance with its rules, which, as far as they affect claims against Egypt, came into operation on 13th April, 1959 (S.I. 1959 No. 640). The old rules of procedure (S.I. 1956 No. 962) still apply to claims against the various Eastern European countries under the respective Orders in Council. The new rules dealing only with the procedure relating to claims against Egypt are intended to enable claims to be disposed of more speedily than they could have been under the Commission's usual rules of procedure.

Right of audience

The rules provide (both old and new rules) that the right of audience is given to—

(*a*) the applicant, other than a corporation. A corporation shall be represented by a barrister or solicitor retained on its behalf or, with leave of the Commission in case of hardship, by a member of the board of directors or by its secretary ;

(*b*) the legal officer, who represents the interests of the compensation fund ;

(*c*) a barrister retained by or on behalf of an applicant or the legal officer ;

(*d*) a solicitor acting generally in the proceedings for an applicant or a solicitor acting as agent for that solicitor, but not a solicitor retained as an advocate by a solicitor so acting.

In assessing the amount of any loss which might be claimed, the Commission has to determine an amount which " seems just and equitable having regard to all the circumstances " (arts. 5 and 9). It must have regard, however, to " any compensation or recoupment in respect of that loss that the person making the application has received, or is entitled to receive from any source other than the fund " (art. 12). This provision raises the interesting point whether any tax deductions obtained by claimants in connection with losses suffered in Egypt will be taken into account by the Commission as " recoupment " under art. 12.

The Foreign Claims Settlement Commission of the United States has adopted the practice of questioning every applicant as to whether a " tax deduction has ever been asserted by the claimant." If the answer is " yes," the claimant is required to give details (see Foreign Claims Settlement Commission Form 604).

A further point worth noting is that the present Order does not distinguish between trustees and beneficiaries as did the previous Orders. Only in the agreement (art. III (*g*)) is there any reference to " beneficial " owners. The disappearance of the provisions on trustees and beneficiaries in the Order is probably the result of the now generally adopted practice of entertaining applications by trustees only in so far as the beneficial interest in the claim was at the relevant time equally British (see, e.g., art. 27 (2) of the Foreign Compensation (Hungary) Order, 1958).

ALFRED DRUCKER.

The Practitioner's Dictionary

" CASH "

WHATEVER doubts there may be as to the correct interpretation of the term " cash," it can be said with certainty that it is not so wide as that given to the word " money," the meaning of which was considered at 102 SOL. J. 644.

However, it is clear that bank-notes, as well as coins, are regarded as " cash." For example, in *Miller* v. *Race* (1758), 1 Burr. 452, Lord Mansfield found that bank-notes are treated as " cash " in the ordinary course and transaction of business, by the general assent of mankind, and he was fortified in this belief by the case of *Popham* v. *Bathurst* (1748), 1 Ambl. 68, where it was held that bank-notes are " cash " although the term did not include bonds or other securities. Further, in *Beales* v. *Crisford* (1843), 13 L.J. Ch. 26, the court was asked to construe the expression " cash or monies so called " and it was decided that the words did not include promissory notes payable to order, long annuities and Columbian bonds.

Apart from coins and bank-notes, " cash " may also include Post Office money orders. Authority for this may be found in *Re Windsor* (1913), 108 L.T. 947, where a testator left his wife " all cash in house " and Warrington, J., held that Post Office money orders should pass to the wife as " they were just as much cash as Bank of England notes." Perhaps it should be mentioned that the wife's right to coin to the value of about £30 which was in the house at the time of the testator's death was not disputed. These coins were obviously " cash."

There appears to be some doubt as to the position of sums standing to the credit of a testator at a bank. In *Re Boorer* [1908] W.N. 189 a testator directed that " all cash in the house or at my bankers at my death " should be paid over to his wife and Parker, J., took the view that this gift included money on current drawing account " and such of the money on deposit as was payable on demand was withdrawable without notice." Sir John Bennett, V.-C., expressed a similar opinion in *Re Ashworth* (1942), 86 SOL. J. 134, where he held that by a gift of " cash " in a home-made will a testator intended to pass " something with which he could go to a shop and purchase goods, and not money obtainable on short notice." He concluded, therefore, that the gift did not include money in the Post Office Savings Bank and he did not think that any distinction should be made between the £3 which could, at that time, be withdrawn without notice and the remainder of the deposit. His lordship thought that a deposit in the Post Office Savings Bank was in much the same category as deposits in ordinary banks, but where notice of withdrawal has been given by the testator before his death, a deposit in a savings bank may be regarded as money on current account (*Re Powell* (1859) 7 W.R. 138).

Although a complete reconciliation of these cases may not be possible, they left the meaning of " cash " in relation to money at the bank reasonably clear. The real doubt has arisen because of the words of Lord Greene, M.R., in *Re Wellsted's Will Trusts* [1949] 1 Ch. 296. His lordship said that " ' cash ' . . . nowadays . . . does not mean mere cash in one's pocket, but it includes a chose in action like money on current or deposit account at the bank." When he spoke these words, his lordship was considering the meaning of the expression " proceeds of sale " as used in s. 28 (1) of the Law of Property Act, 1925, and he seems to have regarded

"proceeds of sale" as synonymous with "cash." The Master of the Rolls was of the opinion that "in spite of an investment, 'proceeds of sale' within the meaning of the subsection are properly to be said to exist so long as they can be traced" but, in view of the earlier decisions, it must be questioned whether his lordship's words have extended the meaning of "cash" to include all money held on deposit account.

A testator may make a gift of his "cash balances" in the bank but such a bequest will be strictly construed. This may be illustrated by *De Roebuck* v. *Lord Cloncurry* [1871] Ir. R. 5 Eq. 588. In that case a testator, having accounts in two banks, bequeathed "all cash balances which shall . . . be standing to the credit either of my current account or deposit account with any of my bankers" and it was decided that the gift did not pass moneys in the hands of his land agent or salesmaster.

The decision of the Supreme Court of New Zealand in *Re Bloomfield* (1914) 33 N.Z. L.R. 1441, suggests that the phrases "cash in hand" and "ready money" may be given the same construction as the word "cash." The testatrix, who was entitled to the income of certain property which was vested in her trustees, bequeathed "all cash in hand at my decease." The trustees were in the habit of paying her the income as and when she asked for it and when such a request was made they usually paid the sum in question into the deceased's banking account. The surplus was retained by the trustees but it was payable to the testatrix whenever she required it. The court took the view that "cash in hand" meant "ready money" and that this expression included the amount of the surplus at the date of death (£1,646 6s. 1d.) as it was "cash under her control with the trustees." Stout, C.J., found that "the trustees acted as bankers, and the money was at call." It appears to follow from *Re Boorer, supra*, that a gift of "cash" would have achieved the same result as the bequest of "cash in hand."

His lordship had no difficulty in finding cases to support his view that "ready money" could mean money in a bank. As it was, he relied upon decisions such as *Vaisey* v. *Reynolds* (1828), 5 Russ. 12, where it was held that a gift of all "monies in hand" passed the balance with the testator's bankers, and *Parker* v. *Marchant* (1843), 1 Phill. 356, where it was found that a gift of "ready money" included two balances of £6,024 and £16,615 which at the time of the testator's death were standing to his credit at his country and town bankers' respectively.

However, the balances involved in these two cases seem to have been held on what would now be referred to as current account. In the first case, the moneys were in the same order and disposition of the customer as if no interest had been allowed and in the second the balances were placed at the banker's "for the purpose of being ready when occasion requires." No interest was payable upon them and they were not subject to any limitation, restriction or condition of any description. It is suggested, therefore, that a gift of "cash," "cash in hand" or "ready money" will include money held by another, e.g., a banker, which was payable to the testator on demand. Apart from the words of Lord Greene, M.R., in *Re Wellsted's Will Trusts, supra*, there does not appear to be any recent authority for saying that such a gift will pass money on deposit which may only be withdrawn on notice, although in *Re Price* [1905] 2 Ch. 55, Farwell, J., suggested that money on deposit with bankers which could be withdrawn by less than twenty-four hours' notice could be classed as "ready money."

D. G. C.

A Conveyancer's Diary

PRESUMPTION OF ADVANCEMENT: EVIDENCE OF ILLEGALITY WILL NOT REBUT

RE EMERY'S INVESTMENTS TRUSTS

"No country ever takes notice of the revenue laws of another": *per* Lord Mansfield in *Holman* v. *Johnson* (1775), 1 Cowp. 341. This is the kind of sweeping pronouncement which impresses itself by the vigour of its language on the mind; but whatever merit it had in Lord Mansfield's day, it is no longer even approximately true (see *Re Emery's Investments Trusts* [1959] 2 W.L.R. 461; p. 257, *ante*).

Over a period of time the plaintiff purchased certain American investments which, on his instructions, were registered in the name of the defendant, his wife. The plaintiff was a British subject, and during this period he was resident in South America. By virtue of that residence the plaintiff was entitled to hold dollars, and it was out of a dollar account which he had opened with a bank in New York (in the names of himself and the defendant) that the purchases of these investments were paid for. The defendant was an American citizen. The investments were eventually placed in what was called a "custody account" with the New York bankers in the name of the wife, and the income was dealt with by being paid as it was received into the parties' joint banking account. In 1955, matrimonial troubles having arisen between the parties, the wife removed all the investments from the custody account, as she was entitled to do as between herself and the bank, and she later sold them and pocketed the proceeds. The marriage came to an end in 1956, and the parties came to England. In his action the plaintiff asked for a declaration that at the time of their removal from the custody account the defendant held the investments as to one-half for herself and as to the other half for the plaintiff.

Prima facie, the registration of the investments in the name of the defendant alone raised as against the plaintiff the presumption of an advancement. This presumption the plaintiff sought to rebut by evidence of his intention at the time. This evidence was accepted, and it was held as a fact that his intention throughout was that the beneficial interest in the investments should be as to one-half to himself and as to the other half to the defendant; he had no intention that the beneficial interest in the whole should be the defendant's. The evidence of the plaintiff himself was supported by the payment of the dividends into the joint banking account. But that was not enough to carry the

plaintiff to success. The evidence disclosed that under the federal law of the United States, when dividends are payable to a non-resident alien, which was the plaintiff's status in the United States, the recipient is liable to a withholding tax which it is the duty of either the company declaring the dividend, or a body in the position of the bank which held the investments in the custody account for the defendant, to deduct. It was clear on the evidence that the plaintiff knew of this tax, and that the existence of the tax and the freedom of the defendant, as an American citizen, from liability to it formed the motive for the registration of the investments in the name of the defendant alone. In those circumstances, Wynn Parry, J., held that had the tax involved been a United Kingdom tax the case would have been concluded against the plaintiff, on the authority of *Gascoigne* v. *Gascoigne* [1918] 1 K.B. 223.

Gascoigne v. *Gascoigne*

In that case a husband took a lease of land in his wife's name and built a house on it. This was done with her connivance, because he was in debt and wanted to preserve the property from his creditors. After the parties had separated and the wife had refused to assign the lease to him, the husband claimed the return of the property; the wife relied upon the presumption that the transaction was an advancement. The county court judge permitted the husband to rebut this presumption by evidence of his motive, and to obtain relief (for the county court judge found in favour of the husband) in equity because he succeeded in proving it. That, the Divisional Court held, the husband was not entitled to do. The principle had been established earlier, in such cases as *Muckleston* v. *Brown* (1801), 6 Ves. 52, in which Lord Eldon had said that a person "coming to equity to be relieved against his own act, and the defence being dishonest, between the two species of dishonesty the court would not act; but would say, let the estate lie where it falls."

Did the fact that the tax in the case under review was a federal tax of the United States, a tax within the *dictum* of Lord Mansfield, make any difference? No, in the judgment of Wynn Parry, J., who referred in this connection to an authority of the Court of Appeal which was binding upon him. In *Regazzoni* v. *K. C. Sethia* (1944), *Ltd.* [1956] 2 Q.B. 490 (a case on a contract to export certain articles from India for an ultimate destination in South Africa, contrary to a ban of the Indian Government on such exports), Denning, L.J. (as he then was), referred to the principle that the courts of this country will not enforce the revenue laws (or the criminal laws) of another country, and went on to say that it is quite another matter to argue that our courts will take no notice of such laws. "It seems to me that we should take notice of the laws of a friendly country, even if they are revenue laws or penal laws, or political laws, however they may be described, at least to this extent, that if two people knowingly agree together to break them or to assist in the doing of it, then they cannot ask this court to give its aid to the enforcement of their agreement."

Relevance of foreign tax laws

In *Re Emery's Investments Trusts* there was not—or at any rate it was unnecessary to find that there was—any agreement to evade the federal tax laws of the United States. But the principle underlying the passage from the judgment of Denning, L.J., in *Regazzoni's* case was held to apply to such a case as had arisen, where a non-residential alien of the United States had so arranged his affairs that he had avoided payment of the withholding tax which he ought to have paid, and which he would have had to pay if the beneficial interest which he had in the investments had been declared "as it should have been" to the American authorities.

These words in inverted commas taken from the judgment of Wynn Parry, J., go to the root of the case. Counsel for the plaintiff argued that all that his client had done had been to arrange his affairs, as he was entitled to do, in such a way as not to attract a particular tax. Reference was made in this connection to certain observations made by Lord Macnaghten in *Commissioner of Stamp Duties* v. *Byrnes* [1911] A.C. 386 (an Australian death duty case). "No one," Lord Macnaghten had said, "may act in contravention of the law. But no one is bound to leave his property at the mercy of the revenue authorities if he can legally escape their grasp." The nub of the whole thing, in the judgment of Wynn Parry, J., lay in this reference to contravention of the law. In the case before him, he held, there was a clear breach of the federal law in the way the transactions in question had been carried out, by the plaintiff's non-disclosure of his beneficial interest. In the result, therefore, the plaintiff was not permitted to rebut the presumption of an advancement in favour of his wife, who was held to be entitled to retain the proceeds of sale of the investments. As Lord Eldon would have said, the estate would lie where it had fallen. A rearrangement of his affairs by the plaintiff with the object of saving tax which would not have involved an actual contravention of the tax laws of the United States would, one may reasonably infer from this decision, have met with different treatment. Lord Macnaghten's observations in *Byrnes'* case (which have been echoed since in decisions in our courts especially in connection with estate duty law) would then have applied, to let in the plaintiff's evidence of his intention that the investments should belong to himself and his wife beneficially in equal shares.

"A B C"

"THE SOLICITORS' JOURNAL," 23rd APRIL, 1859

In the House of Commons reports in The Solicitors' Journal of the 23rd April, 1859, the following appears: "Mr. Briscoe asked the Secretary of State for the Home Department whether he could give any information concerning the death of a boy named Joseph Marsden, which was reported to have been caused or accelerated by cruel usage at the reformatory hulk *Akbar*, at Birkenhead. Mr. S. Estcourt said that, at his request, Mr. Sydney Turner, the inspector of reformatories, had attended the investigation before the coroner and had made inquiries into the case and his report was that the officers of the *Akbar* were fully exonerated from all blame in the matter, the boy's death resulting from natural causes, and nothing whatever of cruelty or ill-usage having been exercised towards him. The truth was that he had been for some years a tramp and in the habit of feigning fits of lameness, etc, and that he had acquired a singular power of simulating an almost total suspension of circulation, respiration, etc., and that on this occasion he carried on the deception too long, producing a collapse of system which no remedies could recover him from. The body of the boy exhibited no marks of violence after death, nor did a post mortem examination afford any trace of the cause of death, externally or internally."

Landlord and Tenant Notebook

COVENANTS BROKEN BY INTENDING ASSIGNOR

It is common to find the joint effect of *Goldstein* v. *Sanders* [1915] 1 Ch. 549 and *Farr* v. *Ginnings* (1928), 44 T.L.R. 249, summed up in these words, or words to the like effect: an application for leave to assign may reasonably be refused by the landlord if the premises are seriously, but not if they are not seriously, in disrepair. I propose, in this article, to criticise the view so expressed.

The facts of *Goldstein* v. *Sanders* were somewhat complicated, but for present purposes it will suffice to mention that in 1900 the lessee of a house (ninety-nine years' lease from 1856) agreed to grant a twenty-one years' underlease with tenant's covenants against business similar to covenants in the head lease and against assigning or sub-letting without the landlord's consent. Early in 1913 the grantees assigned their interest to one *H*, and later in the same year the head lease was assigned to the plaintiff in the action, subject to the agreement for an underlease.

Next door to the house was an hotel belonging to the defendant in the action, and at about this time its condition was such that demolition and reconstruction were necessary. The defendant and *H* thereupon came to an agreement by which *H* agreed to sell his interest in the demised premises to the defendant, who then shored up part of those premises and walled off part of the garden for lavatory accommodation for his hotel.

In January, 1914, the plaintiff's solicitors wrote and told *H* that the premises were out of repair, asking him whether he was prepared to take up a lease and put the premises into repair. In February *H's* solicitors wrote that *H* had agreed to sell his interest to the defendant, that the reconstruction of the hotel on the defendant's premises was done with *H's* knowledge, and that they would soon be asking for the plaintiff's consent to the assignment. According to the statement of facts, assignment to *H* was mentioned; but later we are told that on 19th March, 1914, *H* assigned the premises to the defendant for the residue of the term agreed to be granted by the 1900 memorandum, doing so without the plaintiff's consent "and on the ground that it had been unreasonably and vexatiously withheld." So presumably an application had been made for that consent.

Eve, J.'s decision on this point was expressed as follows: "The plaintiff having discovered that her under-tenant, without the slightest notice to her, and without obtaining any consent from her, had embarked upon this transformation of her property, is called upon within a limited time to give her consent to the proposed assignment by Mr. *H* to the defendant. Small wonder is it that her solicitors replied at once that their client would not consent; no reasonable person could have advised her to take any other course, nor can I imagine any prudent man discovering what the plaintiff had discovered being willing to consent to the assignment . . . I cannot conceive any condition of things which would make the plaintiff's refusal more reasonably or less vexatiously withheld."

Disrepair

But the question what consent was actually sought is not the only one about which there is some confusion. A close examination of the report suggests that it is possible that, when disrepair is referred to, it is merely as a makeweight, the plaintiff's real complaint being that part of the garden had been walled off and built upon for the purpose of being used in connection with the adjoining hotel. It is true that counsel for the plaintiff mentioned that, in their letter of 16th January, 1914, the plaintiff's solicitors had said that the premises were in bad repair, and that in his judgment Eve, J., observed that early in 1914 steps had been taken to get the premises repaired in accordance with the agreement. But the statement of facts does not even say that there were any repairing covenants provided for in the agreement; and counsel for the plaintiff clearly sought to make most of the facts that *H* knew that he was committing breaches of covenant by carrying on business on the premises and was committing gross waste, allowing the building of lavatories in the garden, allowing a new doorway to be made, demolishing a party wall and replacing it by a higher one. So when Eve, J., after summarising the correspondence, said "the state of things existing on the premises was little short of being outrageous. The plaintiff received no explanation of the state of things which was complained of," he was, I would submit, expressing judicial indignation at the cool way in which a tenant had embarked upon alterations in the structure and character of the demised premises rather than at the neglect to keep them in repair (*cf. Marsden* v. *Edward Heyes, Ltd.* [1927] 2 K.B. 1 (C.A.), deciding that an alteration in premises by which they ceased to be a dwelling-house and shop and became a shop only was voluntary waste and breach of implied obligation—the tenancy being oral—to deliver up the demised premises).

"Not very serious"

The facts of *Farr* v. *Ginnings* were that the plaintiff was the grantee and holder of a twenty-one years' lease of a dwelling-house, commenced Michaelmas, 1917, rent £60 per annum, with the "usual" tenant's covenant to repair and covenant not to assign without consent, consent not to be unreasonably withheld. In January, 1926, the defendant landlord's solicitors called upon him to do repairs; he failed to comply. In October, 1927, a similar request produced a request for consent to assign to one *P*, to whom the plaintiff proposed to sell his interest, and who was prepared to do the repairs. The defendant's solicitors refused this request on the ground of the failure to repair (the estimated cost of the work was £100), at the same time suggesting the negotiation of a surrender.

Clauson, J., pointed out that two years had elapsed before the second application, and said that the amount of disrepair was not very serious; that "it was quite different from the case of *Goldstein* v. *Sanders*, where the state of things as to repairs was 'little short of being outrageous.'"

The learned judge proceeded to make the point that the effect of the assignment would be that the defendant would retain her right to damages for breach of covenant against the plaintiff, but would also have a right against *P*, to compel him to put the premises in repair, under pain of forfeiture. And the judgment concluded with the observation that it was perhaps significant that the lessor had suggested a surrender of the lease. (The innuendo, if I may use the expression, would be that the real motive behind the refusal of consent was a

desire to obtain possession; premises let at £60 a year in 1917 would probably yield much more in 1927; and the tenant was proposing to *sell* the remaining eleven years. See *Bates* v. *Donaldson* [1896] 2 Q.B. 241 (C.A.).)

The distinction

Clauson, J., was, it is respectfully submitted, mistaken in saying that in *Goldstein* v. *Sanders* the state of repairs had been little short of outrageous; it is, at all events, unlikely that the learned judge had in mind the proposition that a covenant to repair may be infringed by the making of alterations—whether it is infringed depending on whether the nature of the thing demised is changed, and the reversion injured: see *Hyman* v. *Rose* [1912] A.C. 623.

But there were other differences. In *Goldstein* v. *Sanders* the request was not made by the grantee of the term, the landlord was a mesne tenant bound by covenants against business, and there does not appear to have been evidence that the proposed assignee would put things right.

Nevertheless, it would seem that Clauson, J.'s point that the effect of the assignment would be that two people instead of one would be liable—"the position of the defendant, therefore, would be made better by the assignment"—might have been equally effective in *Goldstein* v. *Sanders*, and invites examination of the question whether outrageous conduct on the part of the applicant justifies a refusal of consent.

Applicant's conduct

No analogy can, of course, be drawn between the position under review and the imaginary circumstances in which Dogberry instructed the Watch to take no action against a suspected person. ("How, if 'a will not stand?" "Why, then, take no notice of him, but let him go; and presently call the rest of the watch together, and thank God you are rid of a knave.") For on the face of it, as Clauson, J.'s observations showed, the riddance may be of real benefit to a landlord.

And it was not suggested, in *Goldstein* v. *Sanders*, that the defendant had intended to continue the prohibited use of the premises; in the opening sentence of his judgment, Eve, J., said that nothing had transpired reflecting on the integrity or good faith of either of the litigating parties, still less on the responsibility or respectability of the defendant.

The plaintiff's case did, it is true, include the point that the defendant was committing waste; but far more criticism was levelled at *H*. The result is, I suggest, difficult to reconcile with authorities on reasonable refusal. And it may be observed that the reason why breach of the covenant against assigning was relied upon rather than breach of the covenant against business or of the repairing covenant is likely to have been that, before 1st January, 1926, relief could not be granted against forfeiture for breach of covenant not to assign, etc. The Conveyancing Act, 1881, s. 14 (6) (i), was not re-enacted by the Law of Property Act, 1925, s. 146.

R. B.

HERE AND THERE

CURIOUS MEETING

THE Court of the Lord Chief Justice at the Law Courts has witnessed many remarkable scenes in its time—the trial of the Jameson Raiders (curtain-raiser to the South African War), the conviction of Whitaker Wright, the fraudulent financier who poisoned himself before he could be removed to prison, the great treason trial of the First World War, when Roger Casement's condemnation inspired the phrase "hanged by a comma." Then the Prince of Wales was cross-examined in the Baccarat case, that sensational and still mysterious Victorian scandal. But just as curious, in its own special way, as any scene in its past history was the recent meeting there of the Victorian Society to hear their officials make their first annual report on the present state of Victorian architecture. Lord Esher, presiding, was, at seventy-eight, a genuine survival of the Society's chosen golden age and had, moreover, a hereditary personal interest in the Law Courts in general and the adjacent court of the Master of the Rolls in particular. G. K. Chesterton, with his inspired prescience, had long ago, when Victorianism was still wholly jejune, prosaic, modern, foreseen a time when men gazing at the remains of King's Cross Station would ask themselves what poet race shot such cyclopean arches to the stars. If we are not quite there yet, we are, under the spell-binding oratory of Mr. John Betjeman, well on the way. Addressing the meeting, he eulogised George Edward Street, the architect of the Law Courts, illustrated his merits by a piece of moulding close at hand, praised the ecclesiastical lettering with which he signposted the complexities of his masterpiece and mourned the recent intrusion of "British Railways" lettering in the neighbourhood of the new refreshment rooms. "Imagine British Railways in the Law Courts!" (Well, with King's Cross Station in mind one can imagine it; and in Brussels the vast Law Courts have so much in common with the most massive of railway terminus architecture that one involuntarily looks for the platforms.)

THE GLORY THAT WAS STREET

THE Law Courts are, no doubt, a splendid public monument, a valuable asset to the tourist trade, but the opinion of those who have to conduct cases or work there in some other capacity has always been: "C'est magnifique mais ce n'est pas un Palais de Justice." It is deeply imbued with all Street's religious sentiments. The Central Hall is a church (the Upper Church at Assisi, in fact). The crypt was designed with a fine gothic gloom. The sloping desks for counsel would be admirable for prayer-books, but piles of papers and law reports have to be held on by main force. The judge sits at pulpit altitude, and it is notoriously difficult to address a man in a pulpit. The narrowness of the bench spaces obviously assumes a congregation all entering and leaving at the same time. Churches do not have libraries and accommodation for the Bar library had to be contrived as an afterthought at the top of a remote staircase. (Another competitor, whose design was rejected, had made the library which, after all, contains the tools of the lawyer's trade, the focus of his plan.) It was just a hundred years ago that THE SOLICITORS' JOURNAL was agitating for the Courts to be built where they now stand and to clear away the complicated slum that then covered the site, but the planning and work took a quarter of a century to carry through this gathering under one roof of tribunals scattered in different places from St. Paul's precincts to Westminster Hall.

IMPAIRED INTEGRITY

IT cannot be often (if ever) that such an epithet as "that stinker Ayrton" has been authoritatively uttered in the Lord Chief Justice's Court (even in dismissing the most

unmeritorious appeal), but Mr. John Betjeman applied it to the Commissioner of Works, Acton Smee Ayrton, who, it seems, parsimoniously truncated what should have been a great clock tower, the crown and glory of the whole building. Undeniably it would have enhanced the ornament if not the use of the building, for I do not believe Street intended to locate the highest Court of Appeal symbolically at its summit. Until quite recently the courts were a perfect period piece. From that point of view the recent tinkering with the crypt to make the new refreshment rooms has ruined its monumental consistency. Polished wooden floors instead of solid flagstones, modern lighting, coats of gay paint on the massive pillars are all an intrusion. It will take an enormous originality in the catering to console a good Victorian, dishes with a special local appropriateness—témoin grillé, feme sole, cervelles juridiques en casserole, Chancery hotchpot, boiled roots of title and, of course, that delicious savoury discovered by Lord Jenkins, salmond on torts. To compensate for the de-gothicising of the crypt, there are schemes afoot to medievalise the lighting in the Central Hall. Those moon-like orbs that have illuminated it are to go and great wrought-iron circlets with a " period " atmosphere are to replace them. They should be more up the Victorian street.

RICHARD ROE.

REVIEWS

Jackson and Muir Watt : Agricultural Holdings. Eleventh Edition. By J. MUIR WATT, M.A., of the Inner Temple, Barrister-at-Law. With a Manual on Tenant Right Valuation by D. H. CHAPMAN, A.R.I.C.S., Q.A.L.A.S. pp. xl and (with Index) 570. 1959. London : Sweet & Maxwell, Ltd. £2 15s. net.

What was originally known as " Jackson " and later as " Aggs " has been completely re-written by Mr. J. Muir Watt, and the result is a more comprehensive and thorough-going exposition of the law governing farm tenancies than has yet appeared.

There are now five Parts : the first, headed " General Statement," is divided into sixteen chapters covering the whole subject (the last two are on " Limited Owners " and " Agricultural Land Tribunals ") ; Part II, which is Mr. Chapman's contribution, concerns Tenant Right Valuation ; in Part III the Agricultural Holdings Act, 1948, and the Agriculture Act, 1958, are set out section by section, with very full annotations ; Parts IV and V contain statutory instruments and forms respectively.

Mr. Muir Watt's style is unhurried, and he is at pains to examine every point from every angle, adducing authority from other branches of the law when this is likely to prove useful. Occasionally one might complain of a " glimpse of the obvious," as when we are reminded, at some length, that at common law a landlord has no right to enter the demised premises. But such problems as those dealt with by *Kent* v. *Conniff* [1953] 1 Q.B. 361, landlord's right to sue for damages in the courts when dilapidations occur during term, are, as one would expect (the author wrote a monograph on the subject and its perplexities at the time), very fully discussed. Where the 1958 legislation is dealt with, e.g., the grounds for consent to the operation of a notice to quit in s. 3 (2) of the 1958 Act replaced s. 25 (1) of the 1948 Act, the practitioner will find that a considerable amount of help and guidance has been placed at his disposal.

The number of matters on which the Acts are not clear is, unfortunately, large ; and it will be found that Mr. Muir Watt approaches these points with becoming caution, giving a lead whenever possible, but refraining from dogmatic assertion. It is the draftsmen who are to blame if, on one of some three pages devoted to discussing the alleged definition of " termination, in relation to a tenancy," we find a paragraph commencing with " it is not quite clear whether," a note commencing with " Surrender . . . appears to be within the definition," and another paragraph commencing " It is submitted that." Possibly a statement of the effect of art. 6 of the Agricultural Land Tribunals and Notices to Quit Order, 1959, might be queried ; whether a tenant is debarred from contesting a s. 24 (*b*), (*d*) or (*e*) reason otherwise than by arbitration may still be arguable, in the absence of any provision to the effect that if he fails to do so he must for ever hold his peace ; but Mr. Muir Watt's reasoning is certainly cogent.

The reviewer will not attempt to criticise Mr. Chapman's contribution, beyond observing that the arrangement is excellent, and the discussion of such matters as " catch crops," the method of storing roots, the analysis of farm costs and schedules of dilapidations (examples given) will be of the greatest value to a practitioner who lacks technical knowledge of agriculture. As Dr. Johnson once observed, he who drives fat oxen need not himself be fat ; nevertheless he should be able to recognise the animals and have some idea of their means of locomotion ; for such reason Part II of the new " Jackson " is very welcome.

Contempt of Court. A report by *Justice*. Chairman : The Rt. Hon. LORD SHAWCROSS, P.C., Q.C. pp. v and 42. 1959. London : Stevens & Sons, Ltd. 5s. net.

This inquiry into the law relating to contempt of court is of great interest. The committee began from the premise that it is essential to the existence of the legal system of any State that the court should have ample powers to enforce its orders and to protect itself from abuse of itself or its procedure, but, after considering the law and procedure as they now stand in England, they conclude that the substantive law of criminal contempt is " chaotic and a serious handicap to free discussion." Many will sympathise with this view although some may not agree with the suggestion that the Press should be free to criticise the competence of a judge. Nevertheless, it is to be hoped that this booklet, especially the proposals contained in its closing chapter, will receive the consideration which it so richly deserves.

BOOKS RECEIVED

Principles of the English Law of Contract and of Agency in its Relation to Contract. By the Rt. Hon. Sir WILLIAM R. ANSON, Bart., D.C.L., of the Inner Temple, Barrister-at-Law. Twenty-first Edition by A. G. GUEST, M.A., of Gray's Inn, Barrister-at-Law. pp. lviii and (with Index) 607. 1959. Oxford : Clarendon Press : Oxford University Press. £2 10s. net.

Digest of Law of Contract and Tort. By A. J. POLLARD. pp. xxi and (with Index) 330. 1959. London : B. T. Batsford, Ltd. £1 17s. 6d. net.

Land-Use Planning. A casebook on the Use, Misuse and Re-use of Urban land. By CHARLES M. HOAR. pp. xxxv and (with Index) 790. 1959. Boston, Massachusetts : Little, Brown & Co. $10.00 net.

Wills and Bequests

Mr. Percival Claude Avery, solicitor, of Wallingford, left £35,414 net.

Mr. John Carrington Smith, solicitor, of Ashton-under-Lyne, left £32,020 net.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

Judicial Committee of the Privy Council

FAMILY PROVISION: RELEVANT DATE IN CONSIDERING FACTS: REASONABLY FORESEEABLE CONTINGENCIES

Dun *v.* Dun

Viscount Simonds, Lord Cohen, Lord Keith of Avonholm, Lord Somervell of Harrow and Lord Denning. 7th April, 1959

Appeal from the High Court of Australia.

The appellant's husband, who died in 1942, by his will made in 1919, left her certain household and personal effects and pecuniary legacies aggregating £A.2,000, and also an annuity of £A.600 which, by a codicil made in 1942, was increased to £A.800 tax free. At the time of his death the testator's estate was valued at £A.22,216, but by 1955, owing to the increased value of part of his estate which was sold by his executors, it had increased to £A.82,000, while the appellant's financial position had deteriorated. In those circumstances the appellant, having been granted an extension of time for that purpose, applied under s. 3 (1) of the Testator's Family Maintenance and Guardianship of Infants Act, 1916–1954, of New South Wales for further provision to be made for her. That subsection provided that on such application the court in its discretion, "and taking into consideration all the circumstances of the case" might order such maintenance as it thought fit. The trial judge (Roper, C.J., in Equity), basing himself on *In re Forsaith* (1926), 26 N.S.W.S.R. 613, held that the time at which the existing circumstances should be considered was the date on which the court heard the application, and in addition to the provisions made for the appellant in the will and codicil he granted her a legacy of £A.5,000 and an annuity of £A.1,500 in lieu of the tax-free annuity of £A.800. On appeal by the respondents, executors of the will, the High Court of Australia, following *Coates* v. *National Trustees, Executors and Agency Co., Ltd.* (1956), 95 C.L.R. 494, which, unknown to the trial judge in the present case, had overruled *In re Forsaith* (*supra*), held that the material time in deciding whether the court had a discretion to vary the will was the date of the testator's death, and allowed the appeal and dismissed the application. The widow appealed.

LORD COHEN, giving the judgment, said that the material date in determining whether the appellant was left without adequate provision was the date of the testator's death; that if the facts as at that date were the only things relevant, the provision the testator made for his widow was not inadequate; that he did not take into account what he thought might be the effect of the war by increasing the annuity in 1942, but that it could not be said that he ought to have foreseen the actual result of the war and post-war conditions. *In re Forsaith* (*supra*) was wrongly decided. Appeal dismissed. Having regard to the special circumstances the costs of both the appellant and the respondents would be taxed as between solicitor and client and paid and retained out of the estate of the testator.

APPEARANCES: *Gordon Wallace*, Q.C. (Australia), and *Anthony Cripps*, Q.C. (*Light & Fulton*); *K. S. Jacobs*, Q.C., and *D. E. Horton* (both of Australia) (*Bell, Brodrick & Gray*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] **[2 W.L.R. 554**

Court of Appeal

INCOME TAX: REMITTANCES FROM UNITED STATES: SALE OF DOLLAR CHEQUES

Thomson (Inspector of Taxes) *v.* Moyse

Jenkins, Romer and Pearce, L.JJ. 9th March, 1959

Appeal from Wynn Parry, J. ([1958] 1 W.L.R. 1063; 102 SOL. J. 758.)

The taxpayer, S. D. Moyse, was domiciled within the United States of America, but at all material times was a British subject resident in the United Kingdom. He was entitled to income from the estates of his mother and father, both estates being situate in the United States. Payments of income from the estates were made by the trustees into an account in the taxpayer's name in the Bank of New York. The taxpayer carried out the following transactions: (*a*) he drew cheques in dollars on the Bank of New York in favour of one or other of his bankers in the United Kingdom and requested them to purchase the cheques; (*b*) his English bankers, as authorised dealers under the Exchange Control Act, 1947, then sold the amount of dollars specified in the respective cheques to the Bank of England and credited to his account in England an amount in sterling equivalent at the then rate of exchange to the amount of dollars specified in the cheques; (*c*) his bankers then, by registered mail, presented his cheques to the Bank of New York, which honoured the cheques and, on the instructions of his English bankers, transferred the amount of dollars in question in each case to the account of the Bank of England with the Federal Reserve Bank of the United States. The taxpayer was assessed to income tax under Cases IV, r. 2, and V, r. 2, of Schedule D to the Income Tax Act, 1918, in respect of these transactions. The Special Commissioners held that the income did not fall within either case, and on appeal that decision was confirmed by Wynn Parry, J. The Crown appealed.

JENKINS, L.J., said that the Commissioners had rightly held that in each case the English bank had acted as a principal and not as a collecting agent. Apart from authority he, his lordship, would say that the amount received, though no doubt received in the United Kingdom, lacked the essential character of a sum brought to the United Kingdom from New York, and neither the sterling sum in question nor the cheque for which it was paid constituted a remittance from New York payable in the United Kingdom. In both *Timpson's Executors* v. *Yerbury* [1936] 1 K.B. 645; 20 T.C. 155, and *Carter* v. *Sharon* (1936), 20 T.C. 229, there were actual remittances from the place abroad payable in the United Kingdom. Although for tax purposes sums might be remitted from abroad without the physical transfer of currency (see *Scottish Mortgage Co. of New Mexico* v. *McKelvie* (1886), 2 T.C. 165, and *Gresham Life Assurance Society, Ltd.* v. *Bishop* [1902] A.C. 287; 4 T.C. 464), there was no such conception as constructive receipt under the material provisions (see *Gresham's* case, *supra*, and *Forbes* v. *Scottish Provident Institution* (1895), 3 T.C. 443). In *Scottish Provident Institution* v. *Farmer* (1912), 6 T.C. 34, the income was brought to the United Kingdom—unlike the present case. In *Kneen* v. *Martin* [1935] 1 K.B. 499; 19 T.C. 33, it was said that to be taxable under the material provisions the sums remitted had to be income and not representing capital. In deciding whether there had been a remittance of income, *Hall* v. *Marians* (*No.* 2) (1935), 19 T.C. 582, showed that it was the actual form of the transaction which was relevant, and not its substance. Reference was also made to *Paget* v. *Inland Revenue Commissioners* [1938] 2 K.B. 25; 21 T.C. 677. The sterling payment was not money or value arising from property not imported within the meaning of r. 2 of Case V. It arose in the United Kingdom. Reference was made to *Foulsham* v. *Pickles* [1925] A.C. 458; 9 T.C. 261, and *Inland Revenue Commissioners* v. *Gordon* (1952), 33 T.C. 226.

ROMER, L.J., agreeing, pointed out that so far as the taxpayer was concerned, each transaction was closed on payment to him of the sterling consideration except in the improbable event of his cheques being dishonoured in New York, so that if and when the sterling was remitted to the United Kingdom in one form or another, he had no interest in it.

PEARCE, L.J. (dissenting), said that the proceeds of the sale of the cheques remained income notwithstanding the change of form. "Received" for the purposes of Cases IV and V covered transmission in any form known to the commercial world. In the present case a well-established method was used and it was a reasonable business inference that after the sale had taken place foreign income arrived in the United Kingdom. The taxpayer, accordingly, received the income in the United Kingdom when he sold the cheques, and it was immaterial both that the receipt by him was in advance of the actual remittances and that at

the time when the transit took place the remittances were not the property of the taxpayer. Appeal dismissed.

APPEARANCES: *John Foster*, Q.C., and *Alan S. Orr* (*Solicitor of Inland Revenue*); *F. N. Bucher*, Q.C., and *P. J. Brennan* (*Vandercom, Stanton & Co.*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] **[2 W.L.R. 577**

EXCHANGE CONTROL: PAYMENT OUTSIDE UNITED KINGDOM: LACK OF TREASURY CONSENT

Barbey and Others *v.* Contract and Trading Co. (Southern), Ltd.

Lord Evershed, M.R., and Pearce, L.J. 12th March, 1959

Appeal from McNair, J.

The plaintiffs were foreigners, who were the holders in due course of bills of exchange amounting to £8,700, of which the defendants, an English company, were the acceptors. The plaintiffs were resident outside the scheduled territories, and, accordingly, Treasury permission was required by virtue of the Exchange Control Act, 1947, for the payment of the bills by the defendants to the plaintiffs. No such permission was granted. The plaintiffs sued the defendants on the bills of exchange and applied for summary judgment under R.S.C., Ord. 14. Apart from the possible effect of the Act of 1947, the defendants did not dispute their liability on the bills. The defendants contended that the plaintiffs' claim was defeated, not only by the withholding of Treasury consent, but also by the implied term in s. 33 (1) of the Act of 1947, and that therefore the plaintiffs could not bring themselves within para. 4 of Sched. IV to the Act, which was limited to cases where the parties had excluded the implied term. MCNAIR, J., upheld the master's order giving the plaintiffs leave to sign final judgment, and the defendants appealed.

LORD EVERSHED, M.R., said that it was plainly the view of the Court of Appeal in *Cummings* v. *London Bullion Co., Ltd.* [1952] 1 K.B. 327 that where, as in the present case, a person had a money claim, but where the proviso to s. 33 (1) of the Exchange Control Act, 1947, had not been brought into operation—i.e., where it was an implied term that until permission was obtained, the performance of the contract was not strictly due—such a person was not without redress; that he could invoke the provisions of Sched. IV, para. 4, to the Act by getting judgment, the effect of which was to compel payment into court. Whatever was the correct view of the meaning of Sched. IV, the court was bound by the decision in *Cummings*' case and the appeal would be dismissed.

PEARCE, L.J., agreeing, said that he was not satisfied that the joint effect of the words of s. 33 and those of para. 4 of Sched. IV defeated the plaintiffs' claim. He did not accept the view that para. 4 was limited in its effect to contracts within the proviso to s. 33 (1), and that it did not affect the contracts coming within the positive provisions of that subsection. But in any event the court was bound by the decision in *Cummings*' case. Appeal dismissed.

APPEARANCES: *Raymond Kidwell* (*Lipton & Jefferies*); *Norman Tapp* (*Markby, Stewart & Wadesons*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[2 W.L.R. 568**

Chancery Division

LANDLORD AND TENANT: BUSINESS PREMISES (SECURITY OF TENURE): GRANT OF VOID LEASE BY LOCAL AUTHORITY: VALIDITY OF NOTICE TO QUIT

Rhyl Urban District Council *v.* Rhyl Amusements, Ltd.

Harman, J. 9th December, 1958

Action.

By a deed dated 21st March, 1910, the plaintiff council, a local authority, leased certain pleasure grounds, appropriated under local Acts, to the defendants for a term of fourteen years from 1st June, 1910. By an indenture dated 18th June, 1921, the defendants surrendered the lease, the term being expressed to merge in the freehold, in consideration of the grant of a new lease. By a deed dated 20th June, 1921, the plaintiffs demised the same property to the defendants for a term of twenty-four years from 1st February, 1921. By a deed dated 23rd June, 1932, the defendants surrendered to the plaintiffs all the property comprised in the lease, such term to merge in the freehold, to enable the plaintiffs to grant a new lease. By a further deed dated 24th June, 1932, the plaintiffs demised the same property to the defendants for a term of thirty-one years from 1st May, 1932, rent being payable on 1st May and 1st November of each year. No consent was obtained by the plaintiffs from either the Local Government Board or the Minister of Health to the grant of any of the leases as required by s. 177 of the Public Health Act, 1875. On 10th June, 1954, the plaintiffs, on the basis that the lease of 24th June, 1932, was void, served on the defendants a notice to quit the premises which "you hold of the [plaintiff] as yearly tenants on 1st May, 1955, or other the end of your tenancy which will expire next after the end of one half-year from the service of this notice . . ." On 1st October, 1954, Pt. II of the Landlord and Tenant Act, 1954, came into force, and on the same day the defendants served on the plaintiffs a notice under s. 26 of that Act proposing a new tenancy to begin on 1st May, 1955; which notice was repudiated by the plaintiffs. On 28th October, 1955, the plaintiffs served a notice under s. 25 of the Act of 1954 to terminate the tenancy on 1st May, 1956. The defendants served a counter-notice under s. 25 (5) of the Act of 1954 and on 22nd December, 1956, wrote saying that notwithstanding any steps they had taken under the Act, the lease of June, 1932, was valid and the plaintiffs' notice a nullity. By an originating summons dated 21st February, 1956, the defendants applied to the court for a new tenancy, but before the summons could proceed it was necessary to determine certain questions of fact, and the plaintiffs brought the present action claiming declarations that the lease of 24th June, 1932, was void and ineffective as a lease, and that the notice dated 28th October, 1955, was valid. The defendants counterclaimed for damages for the plaintiffs' failure to obtain any necessary consent to the grant of the lease of 1932.

HARMAN, J., reading his judgment, said that the first point taken was that the defendants, having asked for a new lease, must be taken to have elected to rely upon their rights under the Act of 1954 and could not be heard to say that the 1932 lease was still subsisting. In his lordship's judgment their letter sent with the notice under s. 26 showed that there was no true election, and there was no reason why they should not by way of insurance protect themselves under the Act of 1954 in case their allegation that the lease was valid proved wrong. But, on the construction of the local Acts, the only power of letting which the plaintiffs had at the time of the 1932 lease was that contained in the Public Health Act, 1875, and since the consent required by s. 177 was not obtained, the lease was not merely voidable but void. Nor were the plaintiffs estopped from denying the validity of the lease; a plea of estoppel could not prevail as an answer to a claim that anything done by a statutory body was wrong: see *Minister of Agriculture and Fisheries* v. *Hulkin* (unreported), referred to in *Minister of Agriculture and Fisheries* v. *Matthews* [1950] 1 K.B. 148. Similarly the lease of 1921 was invalid but nevertheless the surrenders of both leases operated to merge the term in each case in the reversion as they were expressed to do: *Corporation of Canterbury* v. *Cooper* (1908), 99 L.T. 612, and *Doe d. Egremont* v. *Courtenay* (1848), 11 Q.B. 702 were not authority to the contrary in a case where, as here, there had been a separate surrender by deed. The position on 24th June, 1932, therefore, was that a yearly tenancy was created (*Martin* v. *Smith* (1874), L.R. 9 Exch. 50), and although that began on the date when the defendants held over, 24th June, 1932, by 1954 the parties must be taken to have agreed that the yearly tenancy was referable to the dates when rent was paid, that was on 1st November and 1st May. The notice to quit served on 10th June, 1954, for 1st May, 1955, therefore, was effective, and so was the notice served on 28th October, 1955, under s. 25 of the Act. In his lordship's judgment, where a notice to quit had been given under a yearly tenancy, that tenancy was not brought to an end until the notice to quit expired, so that the tenancy which existed on 1st October, 1954, when the Act came into force, was the yearly tenancy and not, as had been argued, a tenancy for a fixed term expiring when the notice to quit expired, and it was that tenancy which was expressed to continue by virtue of the Act. If, then, he had held that the tenancy would have expired apart

from the Act on 24th June in any year, he should have held the statutory notice of 1955 to be bad, because, by s. 25 (3), 1st May would have been too early. As it was, his lordship held that that notice was good. As to the counterclaim, the 1932 lease was void and not voidable and would not have been validated by subsequent consent. Failure to obtain the consent was not a continuing default and the plaintiffs were protected by the Limitation Act, 1939, which Act was the right Act to plead notwithstanding that by 1938 time would have run under the Act of James I: see *Pegler* v. *Great Western Railway Co.* (1947), 63 T.L.R. 178; [1947] 1 All E.R. 355. Judgment for the plaintiffs.

APPEARANCES: *John Arnold*, Q.C., and *John Monckton* (*Speechly Mumford & Soames* for *Joseph Lloyd & Co.*, Rhyl); *R. E. Megarry*, Q.C., and *C. Fletcher-Cooke*, Q.C. (*Preston, Lane-Claypon & O'Kelly* for *Edward Hughes & Co.*, Rhyl).

[Reported by Miss J. F. LAMB, Barrister-at-Law] **[1 W.L.R. 465**

SETTLEMENT: DIRECTION TO DISTRIBUTE CAPITAL UPON DETERMINATION OR FAILURE OF LAST SURVIVING LIFE INTEREST: WHETHER INTERESTS IN REMAINDER ACCELERATED BY SURRENDER OF INTEREST BY LAST SURVIVING TENANT FOR LIFE

***In re* Young's Settlement Trust; Royal Exchange Assurance and Another *v.* Taylor-Young and Others**

Harman, J. 4th March, 1959

Adjourned summons.

By a voluntary settlement, dated 11th September, 1937, a settlor directed that trust funds should be held on trust to pay the income therefrom and in equal shares to each of her three sons during his life with remainder to his named wife, if married to him at the date of his death, during her widowhood, with remainder to his children, whether by the named wife or any other wife. The settlor further directed that " upon the determination or failure of the last surviving life interest in any part of the income " the capital and income should be equally divided *per capita* among the children of her three sons who being male should attain twenty-one years or being female should attain that age or marry. Two of the settlor's sons having died in 1942 and 1955 respectively, each leaving one son, one-third of the income became payable to the surviving son, and one-third each to the sons of the deceased sons. The surviving son of the settlor had two children. By a deed dated 15th August, 1958, the wife of the surviving son purported to disclaim irrevocably her reversionary interest expectant on the death of her husband " to the intent that [her] life interest in any and every part of such income shall fail and determine " and the surviving son, in consideration of £7,500 paid to him by each of his two children, purported irrevocably to surrender his life interest " to the intent that [his] life interest in any and every part of such income shall henceforth be absolutely determined." The trustees took out a summons to determine whether, *inter alia*, having regard to the deed of 15th August, 1958, the capital of the fund might now be distributed between the four grandchildren of the settlor.

HARMAN, J., reading his judgment, said that the case was argued on behalf of the four grandchildren upon the footing that it was a case of acceleration. The cases to which his lordship had been referred where the so-called doctrine of acceleration had been applied involved construing a reference to an interest for life as equivalent to some such words as " subject as aforesaid," it being held that the only object of holding up distribution of capital was to provide for the interest of the life-tenant. As Jenkins, L.J., observed in *In re Flower's Settlement Trusts* [1943] Ch. 800, that result was only reached where the court could conclude from the instrument the express or implied intention of the settlor or testator to bring it about. His lordship had been referred to no case in which the effect of a disclaimer or surrender was to alter vested interests in possession, as was suggested to be the result here. Apart from that, the limitation of capital was for all the children of the sons who attained full age and it was not proposed to exclude a possible future son of the surviving son. Alternatively it was argued as a matter of construction that the last surviving life interest had failed or determined so that the moment of distribution had arrived. In his lordship's judgment it would be wrong, in view of the very peculiar limitations, to infer an intention on the settlor's part to bring about a distribution of capital so long as any of her sons was alive and any of the named daughters-in-law survived and had not remarried. His lordship held that when the settlor directed that distribution should be made when the life interests had determined, she meant after the lives in question (which in the case of females must be construed as life or widowhood) should have come to an end.

(25th March, 1959.) On the question as to the effect of the deed of release on the one-third of income formerly payable to the settlor's surviving son, his lordship declared that that income should now be paid to the children and remoter issue of the surviving son. Declarations accordingly.

APPEARANCES: *R. Cozens-Hardy Horne; John Vinelott; L. H. L. Cohen; P. R. Giffard* (*Freshfields*).

[Reported by Miss J. F. LAMB, Barrister-at-Law] **[1 W.L.R. 457**

Probate, Divorce and Admiralty Division

HUSBAND AND WIFE: PRACTICE: REHEARING: APPLICATION TO DIVISIONAL COURT: TRANSCRIPT TO BE SUBMITTED

Lambie *v.* Lambie

Lord Merriman, P., and Stevenson, J. 16th February, 1959

The Divisional Court directed attention to the laxity which had crept in on applications for a rehearing under r. 36 (1) of the Matrimonial Causes Rules, 1957, in failing to provide the court with transcripts of the proceedings in the court below.

LORD MERRIMAN, P., said that, unless otherwise ordered, a transcript should be made available to the Divisional Court in all such cases, including all legal aid cases.

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] **[1 W.L.R. 493**

DIVORCE: DECREE NISI: APPLICATION TO RESCIND: JURISDICTION

Squires *v.* Squires

Stevenson, J. 6th March, 1959

Summons for rescission of decree *nisi*.

A husband whose wife had obtained in an undefended suit a decree *nisi* of divorce on the ground of cruelty applied by summons, which was contested, for the decree *nisi* to be rescinded, on the ground that after the decree had been pronounced, the parties became reconciled and resumed cohabitation and that the wife thereby condoned the cruelty upon which the decree ***nisi*** was founded.

STEVENSON, J., said that the husband had sought to invoke the jurisdiction vested in the court by s. 12 (2) of the Matrimonial Causes Act, 1950. The Queen's Proctor contended that " any person " in that section had to be compared with the same phrase in s. 10 (2) of that Act, which did no more than declare what was already a fact which should have been apparent to those who had to consider the matter, namely, that " any person "—using that phrase in the widest sense to mean any member of the public—might give information to a public official charged with the duties which were imposed on the Queen's Proctor in relation to matrimonial causes. It was said, however, that the same phrase " any person " in s. 12 (2) must be differently construed for the reason that that subsection was doing something quite different from declaring a fact which already existed, it was conferring a procedural right which was designed to safeguard the interest of the public in seeing that a marriage was not dissolved in consequence of collusion or of the suppression of material facts. But it was not intended to permit, and did not permit, a party to re-open a judgment in which a decree *nisi* had been pronounced against him, and emphasis had been placed on the inconvenience, indeed the scandal, which might result if a party to a suit were enabled by reason of that provision to re-open litigation to which he had been a party and which he had had an opportunity of defending. It had been argued on behalf of the husband that the view that had been put forward on behalf of the Queen's Proctor and the wife on the authorities could not be reconciled with the established

practice of the court which permitted a summons by consent to be issued and acted upon for the purpose of rescinding a decree *nisi* in a case where there had been a reconciliation between the parties. He (his lordship) found no difficulty in distinguishing the court's practice of permitting decrees to be rescinded by consent, where there had been a reconciliation between the parties, from a contested application such as the present one which it was sought to base on s. 12 (2). The existence of that practice did not afford a valid foundation for the argument that a respondent could, in a contested application to rescind a decree *nisi*, bring himself within the meaning and intention of s. 12 (2). The authorities and the reasoning on which they were based led to the conclusion that the court had no jurisdiction to entertain the summons, which must be dismissed.

APPEARANCES: *J. R. Bisschop* (*Seifert, Sedley & Co.*); *H. J. Phillimore*, Q.C., and *John B. Gardner* (*Lewis & Lewis & Gisbourne & Co.*); *James Comyn* (*The Queen's Proctor*).

[Reported by Miss ELAINE JONES, Barrister-at-Law] **[1 W.L.R. 483**

HUSBAND AND WIFE: PRACTICE: DISCRETION STATEMENT: EVIDENCE: CONTENTS INADMISSIBLE UNTIL PUT IN EVIDENCE BY PARTY CONCERNED

Filmer *v.* Filmer

Lord Merriman, P. 7th April, 1959

LORD MERRIMAN, P., referring to para. 5 of r. 28 of the Matrimonial Causes Rules, 1957, directed attention to the fact that that rule only permitted a discretion statement to be put in evidence in open court by the party who had made it; it did not permit counsel appearing for a party, who had lodged a discretion statement, to furnish it as evidence of the adultery therein admitted without putting his client in the witness box to give evidence on oath as to the contents. [His lordship accordingly refused to admit as evidence in support of a wife's charge of adultery in divorce proceedings the discretion statement lodged by the husband which was tendered by counsel for the verification by the wife of the husband's signature thereto.]

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] **[1 W.L.R. 492**

Norwich Consistory Court

ECCLESIASTICAL LAW: FACULTY: PRAYERS FOR THE DEPARTED

***In re* Parish of South Creake**

Ellison, Ch. 12th December, 1958

Petition for a faculty.

The Vicar of South Creake, together with the churchwardens, petitioned for a faculty authorising them to erect in the south aisle of the church a stained glass window bearing the inscription "Pray for the soul of Elizabeth Smith." Elizabeth Smith was the mother of the incumbent petitioner. The petition was unopposed, and the diocesan advisory committee had recommended on artistic and aesthetic grounds that the design of the proposed window was unexceptionable.

ELLISON, Ch., said that the authorities clearly showed that prayers for the departed were not contrary to law unless they necessarily involved the doctrine of purgatory, which doctrine was expressly prohibited by the Church of England. Such prayers might therefore have one of two objects. On the one hand their purpose might be to relieve the souls of the departed from the pains of purgatory according to Romish teaching, in which event they were to be forbidden. On the other hand, they might comprise prayers that the souls of the departed might rest in peace until the time of resurrection, following the teaching of the early church and primitive Christians. Which was the object in any case was a question of fact to be determined from the nature of the particular words themselves, and the inferences to be drawn from all the surrounding circumstances relating to their proposed user. In the present case the words "Pray for the soul of Elizabeth Smith" did not necessarily denote that her soul was suffering the torments of purgatory, and nor did any of the promovents have in mind notions of purgatory or intend to teach or publish directly or indirectly that Romish doctrine. Having come to that conclusion, it followed that the court had a discretion in the matter. The question of discretion could be approached much more liberally in this part of the twentieth century than was considered desirable by some chancellors in times past. It was no longer necessary to apply the faculty jurisdiction in a way which actively discouraged the use of an inscription advocating prayers for the soul of the departed to the same degree as was apparently thought fit formerly. Each case must be judged on its own particular merits in the light of all the circumstances, and the tradition of a particular church and parish had an important bearing. In the present case a faculty would be granted absolutely in respect of the window and a faculty until further order in respect of the inscription to be placed thereon. Faculty accordingly.

APPEARANCES: *Peter Winckworth* (Solicitor) (*Trollope & Winckworth*); *H. S. Ruttle.*

[Reported by M. B. KELLY, Esq., Barrister-at-Law] **[1 W.L.R. 427**

Court of Criminal Appeal

CRIMINAL LAW: SENTENCE: CONSECUTIVE TERMS OF IMPRISONMENT: SUBSEQUENT SENTENCE

Practice Note—Sentence

Lord Parker, C.J., Donovan and Salmon, JJ.

LORD PARKER, C.J., said that the court's attention had been drawn to a difficulty which sometimes arose when a sentence was expressed to begin "at the expiration of the term of imprisonment you are now serving," or words to the same effect. If, as sometimes happened, the prisoner was already subject to two or more consecutive terms of imprisonment the effect of such a formula was that the new sentence would begin at the expiration of the term he was *then* serving, which might be the first of two consecutive terms. This would often not be the intention of the court giving the new sentence. It was suggested that the simplest course would be to use some such formula as "consecutive to the total period of imprisonment to which you are already subject." The only exception to the use of such a formula would be if the intention was that the new sentence should be concurrent with one of the previous sentences. It had been arranged that prison governors should, in appropriate cases, add to the list of previous convictions supplied to the court a footnote indicating that the prisoner was already subject to consecutive sentences, and giving details of them.

[Reported by Mrs. E. M. WELLWOOD, Barrister-at-Law] **[1 W.L.R. 491**

Restrictive Practices Court

RESTRICTIONS: WHETHER 1956 ACT APPLIES TO AGREEMENT NOT TO ACCEPT ALTERATION OR VARIATION OF CONTRACTS

***In re* Blanket Manufacturers' Agreement**

Devlin, J. (President), Upjohn, J., Sir Stanford Cooper, Mr. W. L. Heywood, Mr. W. Wallace and Mr. W. G. Campbell
23rd March, 1959

Reference.

From 1949 onwards the Blanket Manufacturers' Association, a trade association, passed a number of resolutions, accepted by its members as binding, providing, *inter alia*, for a minimum price for "specified blankets" (white all wool raised blankets) and a minimum substance for pastel-coloured or white blankets, and other "general" resolutions designed to implement the report of the Wool Working Party in 1947 that it was most desirable that terms of trade in the wool and textile industry be standardised. The association sought to justify all the resolutions under para. (*b*) of s. 21 (1) of the Restrictive Trade Practices Act, 1956, on the ground that the removal of the restrictions to be implied from them would deny to the public specific and substantial benefits or advantages. The minimum price was an approximation to a stop-loss price, being calculated quarterly from returns made by members of their conversion costs, the lowest six of which (after certain calculations had been made) were declared to members, the lowest of the six being the minimum price. From 1955 to 1958 sales of blankets at the minimum price, regarded by members as extremely low and even uneconomic, had been negligible. At all material times

the blanket industry was very competitive both in quality and price; there was no excess capacity amongst members and their profits were reasonable. To some extent the minimum price did tend to keep down the price of specified blankets. The members of the association produced some 70 per cent. of the total United Kingdom output of blankets, and specified blankets formed 15 per cent. of the total of woven woollen blankets produced by members. No detriment was alleged to result from the minimum price scheme and its effect on the public had been negligible. The association contended that in times of prosperity the scheme promoted confidence which led to modernisation and tended to keep prices down and to improve quality, and that without the scheme in times of deep depression there would be a serious debasement of the quality and weight of blankets. The minimum substance resolution laid down a weight specification which provided a good practical, though by no means conclusive, test of minimum quality to be desired in the types of blankets covered by it. The "general" recommendations related, *inter alia*, to a charge for the supply of more than a certain quantity of patterns, charges for carriage and packing on small parcels, restriction of discount terms, charging for transparent wrapping and stripes and borders, booking of orders at a firm price and refusal to supply blankets on sale or return. The association contended that these resolutions helped to establish orderly conditions of trade and assisted manufacturers to discourage unreasonable demands by customers which, if acceded to, would increase the basic cost of blankets and thereby increase the price which the public would have to pay. The association also passed a resolution relating to "sanctity of contracts," providing that "no manufacturer shall agree to the breaking of any contract by reduction of price or other procedure. Should any attempt be made to break or vary the contract the manufacturer shall refuse to accept cancellation or variation and endeavour to obtain completion of the contract . . . If a manufacturer has good reason to agree a request for the cancellation or variation of a contract he shall not so agree until approval is given by the reference committee." The association contended that this resolution did not amount to the acceptance of a restriction within s. 6 (1) of the Act.

UPJOHN, J., reading the judgment of the court, said that it was not sufficient to prove that a restriction was harmless or might only do good, but the court had to satisfy themselves that the minimum price scheme passed the test of s. 21 (1) (*b*). That essentially was a question of degree in the light of all the evidence and arguments presented to them. Each case must depend upon its own particular facts and they reached the conclusion that the benefits and advantages alleged could not be described as specific and substantial. The real difficulties in the way of the association were, first, those that flowed from the basic fact that the stop-loss scheme applied to so small a proportion of the total blanket production, and, second, in establishing any likelihood of a recession sufficiently severe to bring it into operation. As to the minimum substance resolution, in the court's judgment the association's contention succeeded; the benefits or advantages to the public might properly be described as specific and substantial, and the court was further satisfied that the benefit to the general public outweighed any detriment to the public in finding lighter weight blankets at cheaper prices either not available or not so readily available in the shops. Considering the resolution as to sanctity of contracts, his lordship said that the real question was whether an agreement between two or more persons, being manufacturers of the same type of goods, not to cancel or vary any contract of sale of goods made or to be made in the future with their customers without the consent of some third party, was the acceptance of a restriction which fell within any one or more of sub-paras. (*a*) to (*c*) of s. 6 (1) of the Act. That was a question of construction, and the court had reached the conclusion that, giving the words used in the section their natural and ordinary meaning, such an agreement could not be fitted into any of those sub-paragraphs. Accordingly, the court had no jurisdiction to entertain that resolution. Dealing with the "general" resolutions, his lordship said that they appeared to the court to be reasonable and fair but that the benefits and advantages to the public were not specific or substantial. His lordship emphasised that, as in the case of the minimum price scheme, the judgment of the court on the general restrictions depended upon the particular facts of the particular case and did not necessarily afford a guide to other cases where different circumstances existed. The court declared that all the resolutions except those relating to minimum substance and to sanctity of contracts were contrary to the public interest. Declaration accordingly.

APPEARANCES: *B. J. M. MacKenna*, Q.C., and *Walter Gumbel* (*Brooke, Dyer & Goodwin*, Leeds); *John Megaw*, Q.C., and *Arthur Bagnall* (*Treasury Solicitor*).

[Reported by Miss J. F. LAMB, Barrister-at-Law] [1 W.L.R. 442

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time:—

Agricultural Improvement Grants Bill [H.C.] [14th April.
Birmingham Corporation Bill [H.C.] [14th April.
Bradford Corporation Bill [H.C.] [14th April.
Factories Bill [H.C.] [14th April.
North Devon Water Bill [H.C.] [14th April.
Port of London Bill [H.C.] [14th April.
Small Lotteries and Gaming Act, 1956 (Amendment) Bill [H.C.] [14th April.

Read Second Time:—

Bucks Water Board Bill [H.L.] [14th April.
Housing (Underground Rooms) Bill [H.C.] [16th April.
Town and Country Planning Bill [H.C.] [14th April.

Read Third Time:—

Round Oak Steel Works (Level Crossings) Bill [H.L.] [14th April.

In Committee:—

Eisteddfod Bill [H.C.] [16th April.
House Purchase and Housing Bill [H.C.] [16th April.
Sea Fisheries (Compensation) (Scotland) Bill [H.C.] [16th April.
Solicitors (Amendment) Bill [H.L.] [16th April.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time:—

Finance Bill [H.C.] [15th April.

To grant certain duties, to alter other duties, and to amend the law relating to the National Debt and the Public Revenue, and to make further provision in connection with Finance.

Hospital of St. Mary Magdalene and other Charities (Newcastle-upon-Tyne) Charity Bill [H.C.] [14th April.

To confirm a Scheme of the Charity Commissioners for the application or management of the Charity called the Hospital of St. Mary Magdalene and other Charities in the City and County of Newcastle-upon-Tyne.

Hospital of St. Nicholas (Salisbury) Charity Bill [H.C.] [14th April.

To confirm a Scheme of the Charity Commissioners for the application or management of the Charity known as the Hospital of St. Nicholas, in the City of Salisbury.

Jesus Hospital (Rothwell) Charity Bill [H.C.] [14th April.

To confirm a Scheme of the Charity Commissioners for the application or management of the Charity known as Jesus Hospital at Rothwell, in the County of Northampton.

Poor's Coal Charity (Wavendon) Charity Bill [H.C.] [14th April.

To confirm a Scheme of the Charity Commissioners for the application or management of the Charity known as Poor's

Coal Charity, in the Ancient Parish of Wavendon, in the Counties of Buckingham and Bedford.

Read Second Time:—

Calvanistic Methodist or Presbyterian Church of Wales (Amendment) Bill [H.L.] [13th April.
Highways Bill [H.C.] [16th April.
Income Tax (Repayment of Post-War Credits) Bill [H.C.] [15th April.

Read Third Time:—

Ministry of Housing and Local Government Provisional Order (Colne Valley Sewerage Board) Bill [H.C.] [16th April.
Police Federation Bill [H.C.] [17th April.
Rating and Valuation Bill [H.C.] [16th April.
Restriction of Offensive Weapons Bill [H.C.] [17th April.

B. QUESTIONS

YOUNG OFFENDERS (TREATMENT)

Mr. R. A. BUTLER said that the Prison Commissioners' proposals were at present under consideration by a sub-committee of the Advisory Council on the Treatment of Young Offenders. He hoped to receive a full report on them during the summer. [13th April.

STATUTORY INSTRUMENTS

Adoption Agencies Regulations, 1959. (S.I. 1959 No. 639.) 8d.
Companies Liquidation Account (Interest) Order, 1959. (S.I. 1959 No. 702.) 4d.
County of Roxburgh (Kirkton Village) Water Order, 1959. (S.I. 1959 No. 635.) 5d.
Exchange Control (Authorised Dealers) Order, 1959. (S.I. 1959 No. 644.) 5d.

This Order lists the banks and other persons authorised under the Exchange Control Act, 1947, to deal in gold and foreign currency.

Exchange Control (Authorised Depositaries) Order, 1959. (S.I. 1959 No. 645.) 6d.

This Order lists those who are entitled to act as authorised depositories for the purpose of the deposit of securities as required by the Exchange Control Act, 1947.

Foreign Compensation Commission (Egyptian Claims) Rules, 1959. (S.I. 1959 No. 640.) 8d. (See pp. 316 and 319, *ante*.)
Hungerford–Gloucester–Ross–Hereford Trunk Road (Nettleton Bottom Diversion) Order, 1959. (S.I. 1959 No. 650.) 5d.
Land Drainage (Grants to Catchment Boards) (Amendment) Regulations, 1959. (S.I. 1959 No. 677.) 5d.
Land Drainage (Grants to River Boards) (Amendment) Regulations, 1959. (S.I. 1959 No. 678.) 5d.
London Traffic (Prescribed Routes) (Chelsea and Westminster) Regulations, 1959. (S.I. 1959 No. 651.) 5d.
London Traffic (Prescribed Routes) (Greenwich) Regulations, 1959. (S.I. 1959 No. 634.) 5d.
London Traffic (Prescribed Routes) (Shoreditch) Regulations, 1959. (S.I. 1959 No. 652.) 4d.
Pontypool and District Water Order, 1959. (S.I. 1959 No. 629.) 7d.
Draft **Shipbuilding and Shiprepairing** Regulations, 1959.
Southern Sea Fisheries District (Expenses) Order, 1959. (S.I. 1959 No. 679.) 5d.
Stopping up of Highways (City and County Borough of Bradford) (No. 1) Order, 1959. (S.I. 1959 No. 646.) 5d.
Stopping up of Highways (City and County of Bristol) (No. 5) Order, 1959. (S.I. 1959 No. 675.) 5d.
Stopping up of Highways (County of Chester) (No. 6) Order, 1959. (S.I. 1959 No. 672.) 5d.
Stopping up of Highways (County of Chester) (No. 7) Order, 1959. (S.I. 1959 No. 670.) 5d.
Stopping up of Highways (County of Chester) (No. 9) Order, 1959. (S.I. 1959 No. 632.) 5d.
Stopping up of Highways (County of Derby) (No. 5) Order, 1959. (S.I. 1959 No. 630.) 5d.
Stopping up of Highways (County of Derby) (No. 7) Order, 1959. (S.I. 1959 No. 647.) 5d.
Stopping up of Highways (London) (No. 13) Order, 1959. (S.I. 1959 No. 673.) 5d.
Stopping up of Highways (County of Monmouth) (No. 3) Order, 1959. (S.I. 1959 No. 671.) 5d.
Stopping up of Highways (County of Monmouth) (No. 4) Order, 1959. (S.I. 1959 No. 674.) 5d.
Stopping up of Highways (City and County Borough of Portsmouth) (No. 4) Order, 1959. (S.I. 1959 No. 676.) 5d.
Stopping up of Highways (County of Sussex, West) (No. 6) Order, 1959. (S.I. 1959 No. 633.) 5d.
Stopping up of Highways (County of York, North Riding) (No. 1) Order, 1959. (S.I. 1959 No. 631.) 5d.
Stopping up of Highways (County of York, West Riding) (No. 5) Order, 1959. (S.I. 1959 No. 648.) 5d.
Stopping up of Highways (County of York, West Riding) (No. 6) Order, 1959. (S.I. 1959 No. 649.) 5d.
Wages Regulation (Toy Manufacturing) Order, 1959. (S.I. 1959 No. 668.) 7d.

SELECTED APPOINTED DAYS

April

1st
- Adoption Act, 1958.
- Adoption (County Court) Rules, 1959. (S.I. 1959 No. 480.)
- Adoption (High Court) Rules, 1959. (S.I. 1959 No. 479.)
- Adoption (Juvenile Court) Rules, 1959. (S.I. 1959 No. 504.)
- Children Act, 1958.
- Drainage Rates Act, 1958.
- Local Government Act, 1958, ss. 9 to 14, 57, 58 and Sched. IX.
- Registration of Births, Deaths and Marriages (Special Provisions) Act, 1957.
- Rules of the Supreme Court (No. 1), 1959. (S.I. 1959 No. 450.)
- Tribunals and Inquiries Act, 1958, ss. 8, 9 and 12.
- Tribunals and Inquiries (Revenue Tribunals) Order, 1959. (S.I. 1959 No. 452.)

6th
- Opencast Coal (Registration of Orders) Rules, 1959. (S.I. 1959 No. 481.)

8th
- National Insurance (Unemployment and Sickness Benefit) Amendment Provisional Regulations, 1959. (S.I. 1959 No. 615.)
- Purchase Tax (No. 1) Order, 1959. (S.I. 1959 No. 641.)

9th
- Foreign Compensation (Egypt) (Determination and Registration of Claims) Order, 1959. (S.I. 1959 No. 625.)

10th
- Exchange Control (Authorised Dealers) Order, 1959. (S.I. 1959 No. 644.)
- Exchange Control (Authorised Depositaries) Order, 1959. (S.I. 1959 No. 645.)
- Governors' Pensions (Maximum Amounts) Order, 1959. (S.I. 1959 No. 623.)

13th
- Foreign Compensation Commission (Egyptian Claims) Rules, 1959. (S.I. 1959 No. 640.)

17th
- Adoption Agencies Regulations, 1959. (S.I. 1959 No. 639)

27th
- Food Standards (Ice-Cream) Regulations, 1959. (S.I. 1959 No. 472.)
- Labelling of Food (Amendment) Regulations, 1959. (S.I. 1959 No. 471.)

Obituary

MR. A. C. GILLMAN

Mr. Arthur Charles Gillman, retired solicitor, of London, died on 14th April, aged 78. He was admitted in 1903.

MR. H. GRANTHAM

Mr. Harold Grantham, solicitor, of Northwich, died on 29th March, aged 50. He was admitted in 1930.

POINTS IN PRACTICE

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. They should be brief, typewritten in duplicate, *and accompanied by the name and address of the sender* on a separate sheet, *together with a* stamped addressed envelope. *Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.*

Rent Restriction—Date of Increase of Rent under 1958 Act

Q. We act for a client who had a twenty-one-year lease of a controlled flat which expired shortly before 6th October, 1958. In November, 1958, his landlord served him with a six months' notice in Form S under para. 2 of Sched. IV to the 1957 Act and which expires on a day in May, 1959. The landlords have now claimed an increase in the rent calculated in accordance with s. 2 of the 1958 Act as from the date of service of the notice under the 1957 Act. We have contended that the 1958 Act, so far as the increase of rent provisions are concerned, cannot apply in this particular case until the expiry of the notice served under the 1957 Act and only from the date of such expiry can the landlords claim an increase in the rent calculated under s. 2 of the 1958 Act. The landlords' solicitors state that they have obtained the opinion of counsel, in whose view they are able to demand an increased rent from the date of service of the notice to quit. The 1958 Act can only apply, in our view, where possession is retained until the date of expiry of the landlords' notice, and, further, the provisions of s. 3 of the 1958 Act state that the occupier must satisfy the court that all rent due in respect of the period since the date of expiry of the notice has been paid or tendered to the owner. Are we correct in our view that an increased rent cannot be obtained until the date of expiry of the notice under the 1957 Act or are the landlords' solicitors and their counsel correct in their view that an increase calculated in accordance with the requirements of s. 2 of the 1958 Act can be obtained as from the date of service of the notice under the 1957 Act?

A. While we appreciate that the point is arguable, our own conclusion does not agree with that put forward by the landlords' solicitors. The Rent Act, 1957, Sched. IV, para. 2 (1), entitled the tenant (the tenancy having come to an end by effluxion of time before 6th October, 1957) to retain possession "subject to the like provisions . . . as if the Rent Acts had not ceased to apply to the dwelling-house" until the date specified in the Form S notice, a date in May, 1959. The Landlord and Tenant (Temporary Provisions) Act, 1958 (already in force when the Form S notice was served), applies to a dwelling-house if a Form S notice "has been served on the tenant" (s. 1 (1) (*a*)), and "until the date specified in the notice, possession is retained by a person entitled to retain possession by virtue of," etc. (*ibid.*, s. 1 (2) (*b*)). Undoubtedly there is force in the argument that the "has been served" determines the commencement of the period during which the 1958 Act applies to the dwelling-house, so that the landlords are entitled to the benefit of s. 2 (2); but, not without some diffidence, we have formed the opinion, in view of the way in which the second of the two conditions in s. 1 (2) is expressed ("*until* the date specified in the notice"), that that period does not begin before that date. We consider that "has been retained" would be more consistent with this view than the "is retained," but that the "until" warrants the conclusion that "is retained" does not mean "is being retained."

Caravan—Meaning of "Site"—Whether Son Member of Household

Q. A client of ours is the owner of a house which has extensive grounds. He also is the owner of a building site fronting the main road nearby, and upon which he placed a caravan which is occupied by our client's son and his wife. Permission for the use of the caravan on the site has been refused by the local authority. We are asked to advise as to the removal of the caravan to and from the site at intervals, so that the site will not be used for more than forty-two consecutive days or more than sixty days in any twelve consecutive months. The position is that a boundary of our client's land is within 100 yards of the site, but our client proposed to move the caravan to a position in his grounds, which is considerably more than 100 yards from the building site. Nevertheless, the caravan will be in land owned and occupied by our client, one of the boundaries of which land is within 100 yards of the site. We are also asked to advise upon s. 269 (5) (i) (*a*) of the Public Health Act, 1936, as to whether the son can be deemed to be a member of our client's household. The son was living with his parents until recently and when the son married, he and his wife have been living in the caravan on the building site. The son and his wife have, since marriage, set up an entirely separate home in the caravan, and whilst the son is, of course, a member of our client's family, it may well be that he is not now a "member of the household" within the meaning of the Act, and the son does not eat or sleep at the father's house. We shall be much obliged if you will kindly let us have your advice: (*a*) As to the legal position under the Act if the caravan is moved to and from the site, to a position in the grounds of our client's house. (*b*) As to whether the son can be deemed to be a member of the household within the Act.

A. (*a*) The vital word is, of course, "site." In Lumley's Public Health, 12th ed., vol. III, p. 2717, note (g), it is suggested that "site" means "the area actually covered by the moveable dwelling, not the field in which it is placed." If this view is correct—and *Meyrick* v. *Pembroke Corporation* (1912), 76 J.P. 365, and *Blashill* v. *Chambers* (1884), 14 Q.B.D. 479, lend some support to it—by moving at suitable intervals, the son can use each of his father's pieces of land for sixty days in each year.

(*b*) It is our opinion that the son is not now a member of his father's "household." See note (c) on p. 2719 of Lumley, *Re Drax* (1887), 57 L.T. 475, and *English* v. *Western* [1940] 2 K.B. 156. In particular it should be observed that in *Re Drax*, Kay, J., limited membership of a person's household to those who "boarded . . . and took their meals there" at his expense.

Newspaper Libel and Registration Act, 1881—Definition of a "Newspaper"

Q. We have been consulted by a branch of one of the national political parties regarding a proposal that the branch should publish its own newspaper. The issue would be entirely free and would be paid for by revenue by advertisements. The actual format and layout would be that of the normal size evening newspaper. The paper would be distributed by volunteers for the most part and by some paid workers. It would not be distributed from any news vendors' or newspaper stands though it would be distributed on the same day in each week in order to comply with advertisers' requirements about reaching the public by a certain day prior to each weekend. The material in the newspaper would, of course, be of a political nature and would be mainly devoted to the reporting of meetings and functions held by the party, comments on statements made by political opponents and probably reports of their meetings where necessary and eventually articles of a general nature. The paper would probably also contain advertisements of a political nature limited to the party of origin and also announcements as to future meetings, etc.; the controlling body of the paper would probably be a sub-committee of the party executive which in the normal way would comprise the chairman, secretary and the treasurer, plus a stipulated number of members of the executive. Do you consider that such a paper is a newspaper within the terms of the Newspaper Libel and Registration Act, 1881?

A. The Newspaper Libel and Registration Act, 1881, does, of course, provide a definition of a "newspaper" for its own purposes. Section 1 defines a "newspaper" as "any paper containing public news, intelligence, or occurrences, or any remarks or observations therein printed for sale, and published in England or Ireland periodically, or in parts or numbers at intervals not exceeding twenty-six days between the publication of any two such papers, parts or numbers. Also any paper printed in order to be dispersed, and made public weekly or oftener, as at intervals not exceeding twenty-six days, containing only or principally advertisements." This definition of a "newspaper" does not appear to have been examined by the courts, although the decisions of the Court of Exchequer in *A.-G.* v. *Bradbury* (1851), 21 L.J. Ex. 12, may be helpful. However, we take the view that the proposed publication would not be a "newspaper." It will not be "printed for sale" and it is not intended that it should contain "only or principally advertisements."

Instances of Gifts *Mortis Causa*

Q. We should be obliged if you would kindly let us know whether you consider that the following documents would satisfy the test and their delivery to operate as a good gift *mortis causa* of the property to which they refer, *viz.*, share account pass-book of a co-operative society; a piece of paper with the numbers of premium bonds thereon but *not* the bonds themselves; income tax post-war credit certificates; a municipal bank deposit pass-book.

A. (1) The authorities are not clearly applicable to this case, but we think that the answer is in the negative as we believe that this book does not itself constitute the essential *indicia* of title. Compare *Re Weston* [1902] 1 Ch. 680. We suggest you inquire as to the title to the shares and apply the tests in Halsbury's Laws, 3rd ed., vol. 18, pp. 403 to 405. (2) No; the paper is not *indicia* of title. (3) We have not found any decision governing this case, but we think on principle the answer is in the affirmative. (4) In our opinion, yes. See *Birch* v. *Treasury Solicitor* [1951] Ch. 298 and *Re Weston* [1902] 1 Ch. 680. We do not think that *McGonnell* v. *Murray* (1869), 3 I.R. Eq. 460 would now be followed: compare the remarks in Halsbury, *op. cit.*

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal"]

Losing Ground

Sir,—I am glad that my letter in your issue of 13th February has provoked some comment even though I have not had any support from the legal profession.

The following points arise on the replies you have published: (1) Accountants are still forming companies despite the instructions they have received from their council that this is solicitors' work. (2) Accountants use the blank forms supplied by the printers and suggest that because these forms are supplied to anyone, they are entitled to disregard their own council's ruling. (3) Accountants prepare companies' accounts and consider that, therefore, they are entitled to draft memoranda and articles of association which may have effect on the rights of shareholders *inter se*, widows and children of deceased shareholders which the accountants would, I hope, refer to solicitors for advice. (4) I have complained on several occasions to The Law Society of the shop in the Strand which sells companies over the counter without any regard for the rights or liabilities of the purchaser. (5) Accountants can have little protection from qualified people until they realise that it is the duty of the profession to protect the public by disciplining their own practitioners as our forbears, to their great credit, did in the last century. (6) There may be some solicitors who cannot work out the finer points of company formation, but I think it is the practice of solicitors to confer with their clients' accountants when they are forming companies as to the financial aspects, but this is a matter of courtesy and not because solicitors are incapable of advising. (7) Solicitors are blamed for the delay taken by the Registrar of Companies in dealing with the application for the availability of a name, this is obviously unfair and this delay should be shortened.

Since my original letter, I have had to re-draft completely two sets of articles of association prepared by accountants as they did not deal with the requirements of the shareholder, and wish that I had been consulted in connection with the third set before it was too late for my client.

In conclusion, it would seem to me that the standard form of articles are doing a great dis-service to the community in the same way as standard Will forms do, but they should only be sold to solicitors or should bear some notification, as in the case of circular letters or allotment letters, drawing the attention of the recipient to the fact that it is advisable to consult a solicitor with regard to these documents.

BRYAN CROSS.

London, E.C.2.

NOTES AND NEWS

AUSTRALIA'S OLDEST LAW INSTITUTE'S CENTENARY

The centenary of the founding of the Law Institute of Victoria was observed last month. The Victorian Institute was formed just twenty-four years after the first settlement which established the site of the capital, Melbourne, and only eight years after Victoria gained its status as a colony separate from New South Wales. This historic background was outlined by Mr. J. R. Burt, the Victorian Institute's president, when he inaugurated the centenary celebrations at Melbourne University's Wilson Hall on 16th March and introduced the principal speaker for the night, the president of The Law Society of England and Wales, Mr. L. C. Peppiatt. The centenary proceedings were officially opened by the Governor of Victoria, Sir Dallas Brooks, before a distinguished gathering of members of the legal profession and church and civic dignitaries. Other Commonwealth representatives included the president of the Canadian Bar Association, the president of the New Zealand Law Society, and legal personalities from Malaya, Singapore and Ceylon. Burma was represented by the Burmese Legal Remembrancer, U. Uang Aung, and the United States of America by the president of the American Bar Association.

In a speech packed with solicitor's dry wit, Mr. Peppiatt paid tribute to the Law Institute of Victoria. He pointed out that it was not only the oldest in Australia, but one of the oldest in the British Commonwealth, being only thirty-four years younger than the present Law Society of England and Wales. He told, with lively and rare humour, of the functions and operations of his own Society in its efforts to simplify and clarify the law and improve the status of the profession, and received particular approval when he said, in referring to the Commonwealth, that he regarded it as a group of nations with the greatest potential because its "common inheritance of freedom under the law may prove a major factor in the promotion of world peace."

THE LAW SOCIETY'S SPECIAL PRIZES, 1958

THE LAW SOCIETY has awarded the following special prizes for the year 1958: The Scott Scholarship, Duncan Stuart Lees, LL.B. (London); The Broderip Prize for Real Property and Conveyancing, Bernard Wolfson, LL.B. (Liverpool); The Clabon Prize, Peter Richard Hamilton Dixon, B.A., LL.B. (Cantab.); The Maurice Nordon Prize, Philip Beckman, B.A. (Oxon.); The John Marshall Prize, Arthur Nigel Stewart Jones, LL.B. (Leeds); The Local Government Prize, Arthur Jeffrey Greenwell, B.A. (Oxon.); The Justices' Clerks Society's Prize, Philip Joseph Tomlinson, LL.B. (London); The Samuel Herbert Easterbrook Prize, Gerald Rothman; The Geoffrey Howard-Watson Prize, Nicolas Britton Johnson; The Cecil Karuth Prize, George Thompson Plenderleath, LL.B. (Durham). Local Prizes: The Timpron Martin Prize for Liverpool Students, Bernard Wolfson, LL.B. (Liverpool); The Atkinson Conveyancing Prize for Liverpool or Preston Students, Bernard Wolfson, LL.B. (Liverpool); The Rupert Bremner Medal for Liverpool Students, Bernard Wolfson, LL.B. (Liverpool); The Birmingham Law Society's Bronze Medal, Peter Robert Bromage, B.A. (Cantab.); The Stephen Heelis Gold Medal for Manchester and Salford Students, Jeffrey Isaac Green, LL.B. (London); The Newcastle-upon-Tyne Prize, John Derek Richardson Bradbeer, B.A. (Cantab.); The Wakefield and Bradford Prize, Arthur Nigel Stuart Jones, LL.B. (Leeds); The Sir George Fowler Prize, Richard Thomas Oerton; The Frederic Drinkwater Prize, John Albert Holmes, LL.B. (London); The Render Prize, Michael Charles Hanley Hutchinson, B.A. (Oxon.); The Mellersh Prize, John Joseph Purdy Boyle; The City of London Solicitors' Company's Prize, Thomas George McLean Buckley, B.A. (Oxon.); The City of London Solicitors' Company's Grotius Prize, Stephen Bristow Edell, LL.B. (London); The Alfred Syrett Prize, Brian

Anthony Martelli, B.A. (Oxon.); The Sidney Herbert Clay Prize (Sheffield), John Michael Wheeldon, LL.B. (Sheffield).

No candidate qualified for the following awards: The Robert Innes Prize; The Reginald Pilkinton Prize; The Birmingham Law Society's Gold Medal; The William Hutton Prize; and The Sidney Herbert Clay Prize (Dewsbury).

DEVELOPMENT PLANS

PROPOSALS FOR ALTERATIONS OR ADDITIONS SUBMITTED TO MINISTER

Title of plan	Districts affected	Date of notice	Last date for objections or representations
Anglesey County Council	Holyhead and Llangefni Urban Districts	31st March, 1959	22nd May, 1959
Berkshire County Council	Easthampstead and Wokingham Rural Districts; Tilehurst, Purley, Theale, Sulham and Burghfield parishes	27th February, 1959	11th April, 1959
Buckinghamshire County Council	Linslade Urban District; Wing Rural District	10th March, 1959	30th April, 1959
Cambridgeshire County Council	Cambridgeshire County Council	13th March, 1959	30th April, 1959
Durham County Council	Seaham and Houghton-le-Spring Urban Districts; Hartlepool Borough; Chester-le-Street Rural District	5th March, 1959	23rd April, 1959
Lancashire County Council	Heywood Borough	13th March, 1959	13th May, 1959
	Padiham Urban District; Burnley Rural District	13th March, 1959	13th May, 1959
London County Council	Bethnal Green Borough ..	25th March, 1959	19th May, 1959
Oxfordshire County Council	Banbury Borough	21st February, 1959	20th April, 1959
	Bullingdon Rural District ..	21st February, 1959	17th April, 1959

AMENDMENTS BY MINISTER

Title of plan	Districts affected	Date of notice	Last date for applications to High Court
Bath City Council	—	9th March, 1959	6 weeks from 13th March, 1959
County Borough of Doncaster	—	26th February, 1959	6 weeks from 26th February, 1959
County of the Isle of Ely	—	23rd February, 1959	6 weeks from 27th February, 1959
County of Lincoln—Parts of Lindsey	Scunthorpe Borough; Brigg Urban District	20th March, 1959	6 weeks from 20th March, 1959
County of Middlesex	Edmonton Borough	5th March, 1959	6 weeks from 6th March, 1959
Southampton County Council	Christchurch Borough	20th February, 1959	6 weeks from 20th February, 1959

APPROVAL BY MINISTER

Title of plan	Date of notice	Last date for applications to High Court
Nottinghamshire County Council	2nd April, 1959 ..	6 weeks from 7th April, 1959
Wiltshire County Council ..	12th February, 1959..	6 weeks from 12th February, 1959

THE WELSH FLAG

On 23rd February in a written Parliamentary reply, Mr. Henry Brooke, as Minister for Welsh Affairs, replied to Mr. Raymond Gower, M.P., in part, as follows: "Her Majesty has been pleased to direct that in future only the Red Dragon on a green and white flag, and not the flag carrying the augmented Royal Badge, shall be flown on Government buildings in Wales and, where appropriate, in London." The Council for Wales and Monmouthshire at its last meeting resolved to send a message of gratitude to Her Majesty for her decision. Mr. Henry Brooke, as chairman of the Council, conveyed this message and received a reply from Her Majesty's private secretary. The Queen said she was very glad that her decision about the flying of the Red Dragon flag on Government buildings in Wales and elsewhere had given pleasure, and that she would be grateful if Mr. Henry Brooke would thank the Council for Wales for its message.

Honours and Appointments

Mr. W. A. BAGNALL has been appointed junior counsel to the registrar of Restrictive Trading Agreements in succession to Mr. J. R. Cumming-Bruce.

Mr. GEORGE GILLESPIE BAKER, O.B.E., Q.C., has been appointed a Commissioner of Assize on the North Eastern Circuit (Leeds).

Mr. H. F. CASSEL has been appointed prosecuting counsel for the Crown at the Middlesex Sessions in succession to Mr. J. C. Mathew.

Mr. TUDOR H. M. JONES, solicitor, of Abergele, has been appointed to the staff of the Midland Bank Executor and Trustee Co., Ltd., at the Chester Branch.

Mr. SEBAG SHAW has been appointed prosecuting counsel to the Board of Trade at the Central Criminal Court, London Sessions and Middlesex Sessions in succession to Mr. W. M. G. Faulks.

Mr. WALTER ABRAHAM LEON, registrar of Bromley, Dartford and Woolwich County Courts, has been appointed registrar of Sevenoaks County Court in succession to Mr. J. H. Soady who has retired.

Mr. WILLIAM GEORGE ERIC LEWIS, solicitor, of Reading, has been appointed deputy clerk of Aldridge Urban District Council.

Mr. CLIFFORD MIDDLETON has been appointed a member of the Foreign Compensation Commission for three years.

Mr. ROBERT THOMAS DAVID WILLIAMS, senior assistant solicitor to Ilford Borough Council, and previously senior assistant solicitor to Wolverhampton County Borough Council, has been appointed assistant clerk of the Anglesea County Council.

Mr. JOHN C. P. DE WINTON, solicitor, of Brecon, has been appointed a member of the National Parks Commission.

PRACTICE DIRECTION

PROBATE, DIVORCE AND ADMIRALTY DIVISION

PETITION: CHILDREN OF THE FAMILY

If a petition for divorce, nullity or judicial separation filed on or after 1st January, 1959, refers to "issue," "children of the marriage," etc., without saying that there are no other children of the family, the Registrar's Certificate will in future be refused until the petition has been suitably amended. A certificate from the Petitioner's Solicitors will no longer be accepted.

Dated 16th April, 1959.

By direction of the Registrar.
B. LONG,
Senior Registrar.

COUNSEL SUMMONSES

On and after 27th April, 1959, it will no longer be possible to arrange for those probate and divorce registrar's summonses which are to be attended by counsel to be heard at the Royal Courts of Justice. Such summonses will in future be heard at the Registry at Somerset House, but will continue to be specially fixed.

B. LONG,
Senior Registrar.

Dated 14th April, 1959.

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertising Offices: Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. Telephone: CHAncery 6855.

Annual Subscription: Inland £4 10s., Overseas £5 (payable yearly, half-yearly or quarterly in advance).

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